

NORTH ATLANTIC COAST FISHERIES

PROCEEDINGS

IN THE

North Atlantic Coast Fisheries
Arbitration

BEFORE

THE PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNDER THE PROVISIONS OF THE GENERAL TREATY OF
ARBITRATION OF APRIL 4, 1908, AND THE SPECIAL
AGREEMENT OF JANUARY 27, 1909, BETWEEN
THE UNITED STATES OF AMERICA
AND GREAT BRITAIN

(IN TWELVE VOLUMES)

VOLUME XII

WASHINGTON
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CONTENTS OF PROCEEDINGS.

VOLUME I:

Final Report of the Agent of the United States.
Protocols of the Arbitration.
Award of the Tribunal, and Dissenting Opinion of Dr. Drago on Question Five.
Case of the United States.

VOLUME II:

Part I of the Appendix to the Case of the United States (Treaties, Statutes, and Correspondence).

VOLUME III:

Part II of the Appendix to the Case of the United States (Correspondence).

VOLUME IV:

Case of Great Britain.
Parts I and II of the Appendix to the Case of Great Britain (Treaties and Correspondence).

VOLUME V:

Part III of the Appendix to the Case of Great Britain (Statutes).

VOLUME VI:

Counter Case of the United States.
Appendix to the Counter Case of the United States.

VOLUME VII:

Counter Case of Great Britain.
Appendix to the Counter Case of Great Britain.

VOLUME VIII:

Printed Arguments of the United States and Great Britain.

VOLUME IX:

Part I of the Oral Arguments before the Permanent Court (Sir Robert Bannatyne Finlay, Great Britain; Honorable George Turner, United States).

VOLUME X:

Part II of the Oral Arguments before the Permanent Court (Sir James S. Winter, Great Britain; Honorable Charles B. Warren, United States; Mr. John W. Ewart, Great Britain; Honorable Samuel J. Elder, United States).

VOLUME XI:

Part III of the Oral Arguments before the Permanent Court (Sir William Snowden Robson, Great Britain; Honorable Elihu Root, United States).

VOLUME XII:

Appendices to the Oral Arguments before the Permanent Court.
Indexes.

NORTH ATLANTIC COAST FISHERIES

APPENDICES AND INDEX TO
ORAL ARGUMENTS

PRESENTED BY

THE UNITED STATES AND
GREAT BRITAIN

BEFORE THE

TRIBUNAL CONSTITUTED UNDER AN AGREEMENT

SIGNED AT WASHINGTON

ON THE 27TH DAY OF JANUARY, 1909

NOTE.—There also appears in this volume the agreement of
July 20, 1912, between the Governments of the United
States and Great Britain.

TABLE OF CONTENTS.

APPENDICES TO THE ORAL ARGUMENTS.*

	Page.
(A.) Notes from letters and despatches of Lord Castlereagh. (See Oral Argument, Vol. X, p. 617)-----	1355
(B.) Note on regulations referred to by Sir William Robson, July 25, 1910. (See Oral Argument, Vol. XI, p. 978)-----	1362
(C.) Statement of specific provisions of certain legislative and executive Acts of Newfoundland and Canada called to the attention of the Tribunal by the United States for action pursuant to articles 2 and 3 of the special agreement of January 27, 1909. (See Oral Argument, Vol. XI, p. 1017)-----	1369
(D.) Note on legislation as to light dues and customs regulations referred to by Sir William Robson, July 29, 1910. (See Oral Argument, Vol. XI, p. 1075)-----	1376
(E.) Correspondence respecting the Award of the Halifax Fisheries Commission, 1878. (See Oral Argument, Vol. XI, p. 1000)-----	1379
(F.) Letter from Mr. Anthony St. Jno. Baker to Lord Castlereagh, November 28, 1815. (See Oral Argument, Vol. XI, p. 1131)-----	1395
(G.) Answer of Great Britain to the statement of the United States as to the statutes and regulations to which objection is taken. (See Oral Argument, Vol. XI, p. 1165)-----	1395
(H.) Memorandum submitted on behalf of the United States, showing the recognised necessity and uniform practice in 1818 of express stipulation in order to exercise authority over aliens enjoying treaty rights of commerce, trade, residence, &c. (See Oral Argument, Vol. XI, p. 1226)-----	1396
(I.) Russian-Japanese Convention concerning fisheries, 1907. (See Oral Argument, Vol. XI, p. 1224)-----	1404
(J.) Memorandum submitted by the United States in reply to abstract of statutes, proclamations, &c., filed by Great Britain. (See Oral Argument, Vol. XI, p. 1237)-----	1409
<i>Jennings v. Hunt</i> , 1820, <i>idem</i> -----	1421
(K.) Extracts from French official correspondence concerning the nature of the French treaty rights in Newfoundland. (See Oral Argument, Vol. XI, p. 1290)-----	1422
(L.) Correspondence between the Agents of the United States and Great Britain with the Permanent Court of Arbitration-----	1427

* The page references under this section are to the pages of the original publication, which are shown inset in this publication. All other references are to the regular pagination.

AGREEMENT OF JULY 20, 1912.

Mr. Chandler P. Anderson to the Secretary of State, August 3, 1912-----	Page. 2376
Text of agreement-----	2376

INDEX TO ORAL ARGUMENTS.

Sir Robert B. Finlay-----	2421
George Turner-----	2491
Sir James Winter-----	2537
Charles B. Warren-----	2516
John S. Ewart-----	2401
Samuel J. Elder-----	2383
Sir William Robson-----	2455
Elihu Root-----	2468
Miscellaneous-----	2542

APPENDICES TO THE ORAL ARGUMENTS BEFORE THE PERMANENT COURT OF ARBITRATION.

1355

APPENDIX (A).

NOTES FROM LETTERS AND DESPATCHES OF LORD CASTLEREAGH, VOL. II,
3RD EDITION, PUBLISHED IN LONDON, 1853.

Lord Castlereagh to His Majesty's Commissioners appointed to negotiate at Ghent.

FOREIGN OFFICE, *July 28, 1814.*

MY LORD AND GENTLEMEN: The Government of the United States of America having appointed Commissioners to treat directly for peace with Great Britain, the Prince Regent has thought fit to appoint Commissioners on the part of His Britannic Majesty for the like purpose, and I have the satisfaction to acquaint you that His Royal Highness has been pleased to entrust to you the service in question. It has been agreed that these discussions shall take place at Ghent, to which town you will repair with the least practicable delay. I enclose the necessary full powers; and am commanded by the Prince Regent to convey to you, the following instructions for the direction of your conduct.

The enclosed treaties will put you in possession of the relations, as far as they have been reduced into positive stipulations, which have existed between the two States since the independence of America was recognised by this country. You will observe that these instruments have ceased to be binding in consequence of the war. The state of possession, as thereby settled, must however be considered as the territorial arrangement which would revive upon a peace, except so far as the same may be modified by any new treaty.

You may assure the American Commissioners that the British Government, whatever sense it may entertain of the causes of the rupture, is sincerely desirous of a permanent adjustment of all differences, and that this desire is not abated by the successful termination of the war in Europe; and that, with this view, you are authorised to meet with frankness and conciliation whatever propositions the American negotiators may be prepared to offer, for terminating the war which has been declared by their Government.

So far as the Prince Regent's Ministers can anticipate the nature of the approaching discussions, they appear to class themselves under the four following heads: (1), the questions mainly affecting our maritime rights and strength, and especially the undoubted right of the Sovereign of these realms to claim and enforce in war the alle-

giance and service of his subjects; (2), the protection which the Indians, as allies, are entitled to claim at our hands; (3), the regulation of the frontier, to prevent hereafter, as far as possible, jealousy or collision; and (4), the question of the fishery.

You will lose no time in ascertaining whether the American negotiators are prepared to enter upon a final arrangement on all these respective topics. Should they declare their instructions not to be so comprehensive, you will call upon them to state what are the points on which they are alone enabled to treat; and you will forthwith communicate the same to His Majesty's Government. In executing this part of your duty, it will be desirable that you should ascertain, as far as possible, the views of the American Commissioners, without committing your Government. In doing this, you will, in the early stage of the negotiations, confine yourselves to such verbal communication as may appear to you best calculated to bring the negotiation to its true bearing.

That you will be better enabled to *sound* the views of the American Commissioners, I deem it proper to furnish you with some general observations on the points at issue; and, first, with respect to the maritime question, you will endeavor to ascertain whether the American negotiators have any specific measure to propose for obviating hereafter the alleged abuses of which they complain, in the practice of impressing British seamen from on board American merchant-ships. The enclosed proclamations will demonstrate that the British Government can never recede from the principle of holding their own subjects to their duty of allegiance.

You will endeavour to ascertain whether the American Government is disposed prospectively to desist from their extravagant pretensions under this head, in which case something might possibly be devised to relieve their difficulties as to the past, by adapting a reasonable system of indulgence towards individuals who may have actually and *bona fide* entered amongst them, under the faith of their acts of naturalisation. This might be effected by stipulations, without bringing the question of right to issue on either side.

The right of search and of withdrawing our seamen from on board American merchantships can never be given up, even for a time, in exchange for any municipal regulation whatsoever; but, if the American negotiators have any regulations to propose tending to check abuse, the British Government will weigh them dispassionately, and with a desire to conciliate. The difficulties, however, of finding a satisfactory expedient may render it desirable to wave this discussion altogether, if other points can be adjusted. To this the British Government will have no objection, considering the question to be practically set at rest by the return of peace. They are equally prepared to leave the rule of war of 1756 to rest upon 1356 its own clear and well established authority.

Should the American Commissioners abstain from stirring this question, you will remain silent upon it. Should they think fit to avert to it, you will assert the principles upon which the British Government has uniformly maintained the legality, as well as the justice, of this rule. Should any specific proposition be laid before you on this subject, you will declare that you have no authority to enter into discussion on this question, and that you can only re-

ceive such a communication for the purpose of simply transmitting it to your court.

Upon the subject of the Indians, you will represent that an adequate arrangement of their interests is considered by your Government as a *sine quâ non* of peace; and that they will, under this head, require not only that a full and express recognition of their limits shall take place; you will also throw out the importance of the two States entering into arrangements, which may hereafter place their mutual relations with each other as well as with the several Indian nations, upon a footing of less jealousy and irritation. This may be best effected by a mutual guarantee of the Indian possessions, as they shall be established upon the peace against encroachment on the part of either State. Much of the disquietude to both Governments, as connected with Indian affairs, has been produced by that regular and progressive system of encroachment which renders the Indians resentful and discontented, and which, by gradually approximating the American and British settlements, gives both States a motive for interference in Indian affairs which would not otherwise exist. The best prospect of future peace appears to be that the two Governments should regard the Indian territory as a useful barrier between both States, to prevent collision; and that, having agreed mutually to respect the integrity of their territory, they have a common interest to render these people as far as possible peaceful neighbours to both States.

You may open to the American Commission that the British Government is desirous of revising the frontier between the two States, not in the spirit of conquest or dominion, but upon principles which they consider to be strictly defensive, and, in this point of view, conducive to the well-understood interests of both Powers. It has become the more necessary to reconsider the treaty of 1783, which was very hastily and improvidently framed in this respect, from the intention so publicly and recently avowed in the Acts and proclamations issued by the American Government of annexing by conquest the Canadas to their dominions. This plan becomes the more alarming, as a part only of a more general system of aggrandisement, in the execution of which they have possessed themselves of Louisiana and a part of both the Floridas in the midst of peace, and whilst Spain was bravely contending for her existence.

But the point, upon which you must be quite explicit from the outset of the negotiation, is the construction of the treaty of 1783 with relation to the fisheries. You will observe that the third article of that treaty consists of two distinct branches: The first, which relates to the open sea fishery, we consider a permanent obligation, being a recognition of the general right which all nations have to frequent and take fish in the high seas.

The latter branch is, on the contrary, considered as a mere conventional arrangement between the two States, and, as such, to have been annulled by the war. This part of the treaty has been found to be productive of so much inconvenience, as to determine His Majesty's Government not to renew the provisions of it in their present form; nor do they feel themselves called upon to concede to the Americans any accommodation within the British sovereignty, except upon the principle of a reasonable equivalent in frontier or

otherwise; it being quite clear that, by the law of nations, the subjects of a foreign State have no right to fish within the *maritime jurisdiction*, much less to land on the coasts belonging to His Britannic Majesty, without an express permission to that effect.

In the present state of the discussions, I abstain from entering upon the commercial relations between the two States, not wishing to clog the question of peace with arrangements which might protract your discussions. It may be proper that you should keep in mind, in the wording of any article for the termination of hostilities, so to frame it as to make them cease and determine, not upon the signature of the treaty, but upon its actual acceptance and ratification, without alteration, by the American Government. The difficulties which have arisen with that Government on former occasions will sufficiently explain the necessity of this precaution.

As soon as you have ascertained the extent and nature of the powers with which the American Commissioners are furnished, and have reported to me the spirit in which they appear to you disposed to conduct the negotiation, you shall be furnished, without loss of time, with more precise instructions for the direction of your conduct.

I have, &c.

CASTLEREAGH.

Lord Castlereagh to the Commissioners at Ghent.

FOREIGN OFFICE, *August 14, 1814.*

MY LORD AND GENTLEMEN, Your despatch, with its enclosures, of the 9th, from Ghent, has been received and laid before the Prince Regent. It appears from the communications you have had with the American Commissioners, that, upon two out of the four points referred to in your instructions, namely, upon the second and fourth, the American negotiators have received no instructions from their Government, and that they have, on their part, suggested three additional topics for discussion. Upon the point of the fisheries, it does not clearly appear whether, in the absence of instructions, they consider themselves authorised, supposing all other questions arranged, to sign a treaty of peace, upon the distinct understanding that the right of fishing and drying within the British jurisdiction does not thereby of right revive. Their mode of receiving your remarks on this head seems to countenance such an interpretation of their meaning; but you will feel the importance of not leaving the matter in doubt.

1357. Upon the question of the Indians, there is also room for further explanation. You will observe that this subject, in your instructions, divides itself into two propositions: (1) the Indians being included in the peace; (2) such an arrangement of limits, as, whilst it secures to the Indians the benefit of the peace, may tend the better to preserve hereafter the relations of amity between the British and American Governments.

On both these points it would seem that the American Commissioners are equally unauthorised to conclude; and, although the second point might possibly not have been foreseen, yet it appears unaccountable, upon the first, that the American Government should

have left the negotiators without instructions, inasmuch as they could have had no reason to suppose that the British Government would for a moment listen to a separate peace, to the exclusion of the Indians, who have acted with them as allies during the war.

But upon the practicability of prosecuting the negotiation with any utility, in the present imperfect state of the instructions, of which the American negotiators avow themselves to be in possession, the whole seems to turn upon the point you have so properly suggested, viz., whether the Commissioners will or will not take upon themselves to sign a provisional agreement upon the points on which they have no instructions. If they decline this, the British Government sees no advantage in prosecuting the discussion further until the American negotiators shall have received instructions upon these points. If, on the contrary, upon a candid explanation of the principles upon which Great Britain is prepared to treat upon these subjects, they are willing, upon their own responsibility, to sign a provisional agreement, the negotiation may proceed, and the treaty, when concluded, may be sent, with the British ratification, to America to be at once exchanged, if the American Government shall think fit to confirm the act of their Commissioners. The British Government cannot better evince their cordial desire for peace than by placing the negotiation upon this issue. You will, with this view, again call the attention of the American Commissioners to the Indian question, and, as connected with it, the question of boundary.

I am desirous of particularly directing your attention to these points, as the others suggested on either side for deliberation, if you have rightly interpreted the meaning of the American Commissioners as to the fisheries, do not appear necessarily calculated to create an insurmountable obstacle to the immediate restoration of peace. In illustration of this, you may remark that, upon the first of the British points, we are not disposed to insist upon any express stipulation and are willing to leave the questions therein involved to rest, as heretofore, upon the principles of general law.

We see as little necessity for any stipulation upon the first of the American points. Whatever difference may have existed upon the retaliatory measures to which the British Government was obliged to have recourse in the late war against France, we are not aware of any difference that exists upon the ordinary law of blockade, or any other branch of belligerent or neutral rights. If the American Commissioners shall bring forward anything specific on this or any other subject, it will be the duty of the British Government to consider it; but there seems no adequate motive on either side for encouraging abstract discussions of this nature, which, if gone into, all must be gone into generally, and not partially, with a view of arriving at express stipulations upon the points of sovereignty and impressment, as well as upon the points of blockade, &c.

With respect to the second of the American points, you cannot be too peremptory in discouraging, at the outset, the smallest expectations of any restitution of captures made under the Orders in Council. There may be claims on both sides of an ordinary description, involving no principles to which His Majesty's Government would have to object, and upon which mutual satisfaction might be given; but these cases are probably of a very limited ex-

tent, and of nearly equal amount, on each side. It seems better not to entangle the question of peace with their discussion, with respect to the third point—although the British Government will be prepared to enter into it, with every desire to come to an understanding, they do not conceive that the war ought to be protracted on this ground alone.

The main question, then, seems to be, upon what general principles is the British Government ready to terminate the contest, as far as relates to boundaries and the Indians—I state upon what general principles—for, until the American Commissioners are prepared to agree to certain fixed principles as the basis of a provisional article, the discussion of details can be productive of no possible advantage.

Upon the point of frontier, you may state that the views of the British Government are strictly defensive. They consider the course of the lakes, from Lake Ontario to Lake Superior, both inclusive, to be the natural military frontier of the British possessions in North America; as the weaker power on the North American continent, the least capable of acting offensively, and the most exposed to sudden invasion, Great Britain considers itself entitled to claim the use of those lakes as a military barrier. It is quite obvious that a boundary-line, equally dividing these waters, with a right in each State to arm, both upon the lakes and upon their shores, must be calculated hereafter to create a perpetual contest for naval ascendancy, in peace as well as in war—a species of conflict which is likely to be productive of an extent of expense and jealousy, equally to be deprecated by both Governments. It becomes, therefore, necessary, for the sake of peace, to decide to which Power these waters shall, in a military sense, exclusively belong; and, for the reasons above stated, Great Britain considers that she is entitled to lay claim to them.

To give practical operation to this principle it seems necessary that the Power to whom the lakes belong shall have the military command of both shores, to effect which a scope of territory, with a suitable frontier, is important.

The British Government is prepared to assign, for deliberation, a boundary in execution of this object; but, as this would necessarily extend their possessions to the southward of the lakes, and as territory, as such, is by no means the object they have in view, they will be disposed to leave the sovereignty of the soil undisturbed, and, as incident to it, the free commercial navigation of the lakes, as at present enjoyed by the United States, provided the American Government will stipulate not to preserve or to construct any fortifications upon or within a limited distance of the shores, or maintain or construct any armed vessels upon the lakes in question or upon the rivers which empty themselves into the same.

If this can be regulated there will then remain for discussion the arrangement of the northwestern boundary between Lake Superior and the Mississippi, and on the side of lower Canada, such a line of demarcation as may establish a direct line of communication between Quebec and Halifax. The free navigation of the Mississippi must also be provided for in the arrangements to be made.

With respect to the Indians, you will repeat that their being expressly included in the peace is considered to be a *sine quâ non*; and,

that, with respect to their limits, the British Government is prepared, as the least objectionable arrangement to the United States, to take the Treaty of Greenville, subject to certain modifications, as a basis for negotiation; and having agreed as to the general boundaries, to stipulate, mutually with the American Government against any acquisition, by purchase, on the part of either State.

I trust that this outline will enable you, without further delay, to ascertain whether the negotiation can now be prosecuted with a prospect of advantage, or whether the conferences must not be suspended until the American negotiators can receive further instructions from their Government. In the latter case you will, however, declare to them, that the British Government, upon the resumption of the conferences, will not consider themselves bound by anything which has hitherto passed, or precluded from regulating its conduct by the then state of the war—the causes which obstruct an immediate adjustment originating exclusively with the negotiators on the part of the United States.

I trust the American Commissioners will continue to do justice to the frank and explicit conduct which your instructions have enabled you to adopt, and to the desire manifested by the British Government to bring forward nothing which can be deemed derogatory to the honour of the American Government, or which can tend unnecessarily to delay the restoration of peace.

I am, &c.

CASTLEREAGH.

P. S.—Care must be taken, in any settlement to be made, to remove all doubts as to the islands in Passamaquoddy Bay being considered as falling within the British boundary there.

C.

Lord Bathurst to the Commissioners at Ghent.

FOREIGN OFFICE, *October 18, 1814.*

MY LORD AND GENTLEMEN: I have had the honour of receiving your despatch No. 9, transmitting a copy of a note from the American Plenipotentiaries. The American Plenipotentiaries having in that note consented to accept, provisionally, the article which you proposed, relating to the pacification of the Indian tribes or nations, and having expressed a wish that the British Plenipotentiaries should now communicate the *projet* of a treaty embracing all the points deemed material to Great Britain, the American Plenipotentiaries engaging, on their part, to deliver, in a *counter-projet*, in respect to all the articles to which they may not agree, you are instructed to state that the three material points which remain for consideration are the following:—

First, with respect to the rights of naturalisation and the question of impressment, and others relating to maritime laws. It seems agreed, by both parties, that the pacification of Europe renders any arrangement on these points unnecessary, and you are authorised to state that none will be required by Great Britain, but that, if it shall be insisted that these points shall be in any way named in the treaty, they must, in that case, be definitively stated, and the British Government have already stated that they never can recede from what

they have repeatedly declared to be the established law in these respects.

Secondly, the fisheries. You are to state that Great Britain admits the right of the United States to fish on the high seas without the maritime jurisdiction of the territorial possessions of Great Britain in North America; that the extent of the maritime jurisdiction of the two contracting parties must be reciprocal; that Great Britain is ready to enter into an arrangement on that point; and that, until any arrangement shall be made to the contrary, the usual maritime jurisdiction of 1 league shall be common to both contracting parties. But they cannot agree to renew the privilege, granted in the treaty of 1783, of allowing the Americans to land and dry their fish on the unsettled shores belonging to His Britannic Majesty, such privilege having been annulled by the war, and it being the undoubted right of the British Government to refuse to renew it.

The third point is the future boundaries of the two contracting parties. The boundaries to the north-west may be considered as already settled by the admission of the American Plenipotentiaries that the British Government is willing to treat on the basis of *uti possidet*, subject to the modifications for mutual accommodation. 1359 Considering the relative situation of the two countries, the moderation evinced by His Majesty's Government in admitting this principle, in the present state of the contest, must be manifest; and you will not fail to impress this strongly on the minds of the American Plenipotentiaries. In their note of the (blank), they, in fact, admit that this is a fair principle of negotiation. I cannot expect any serious objection to it. On their admitting this to be the basis on which they are ready to negotiate, but not before they have admitted it, you will proceed to state the mutual accommodations which may be entered into in conformity with this basis.

The British occupy Fort Michilimakinac, Fort Niagara, and all the country to the east of the River Penobscot. On the other hand, the forces of the United States occupy Fort Erie and Fort Amherstberg. On the Government of the United States consenting to restore these two forts, Great Britain is ready to restore the forts of Custine and Mahias, retaining Fort Niagara and Fort Michilimakinac, leaving the boundary, on the side of the Province of Main, running thus: from the River St. Croix, including Moose Island, which was always a part of New Brunswick, along the line established by the Commissioners in 1798, running astronomically north, until it is intersected by the River Ristook, up to its source, and then along the high ridge of mountains, and running a westerly course, until they abut upon the heights which form the present boundary.

In the note which you will present to the American Plenipotentiaries, you will not recur to former topics, the discussion of which, in the preceding note, have given rise to so much occasional irritation. It may, however, be necessary to remark the satisfaction you have in not deeming a renewal of these discussions any longer necessary.

In delivering your note, you will also state that you have not reduced the propositions into the shape of articles, as that may be easily done when the substance is agreed upon.

I have, &c.

BATHURST.

Lord Bathurst to the Commissioners at Ghent.

FOREIGN OFFICE, December 6, 1814.

MY LORD AND GENTLEMEN: It is with great satisfaction that His Royal Highness observes so great a progress has been made towards bringing the negotiation to a favorable conclusion. There appear but two points on which there exists any material difference, and upon which it is necessary, therefore, to furnish you with instructions: First, with respect to the alteration made in the first article; secondly, the discussions which have grown out of the amended *projet* of the 8th article.

With respect to the alteration in the 1st article, you will insist on the retention of the words in question. You will not fail to impress upon the American Commissioners that the alteration is in no way inconsistent with the principle of *status quo ante bellum*, upon which we have agreed to treat, as there is a manifest difference between the restitution of territory which unquestionably belonged to either party, previous to the war, and the restitution of that of which either party may have had temporary possession, with a disputed right, immediately preceding the war.

As, however, inconvenience might arise from the act of restoring territory situated in many different places becoming dependent on the opinion which the party in possession might hold of his right to retain it, you will readily consent to the limit, as the Commissioners have proposed the application of the article to such possessions only as are, by the tenour of the treaty itself, liable to dispute; or, as a more specific limitation, to such possession as are by the treaty to be referred to the Commissioners by whom the questions of boundaries are to be finally decided. Provided the object for which the alteration was proposed be obtained, viz., the retention of the islands in Passamaquoddy Bay, during the time of reference to the Commissioners above mentioned, you will show every facility in wording the limitations.

The discussions which have grown out of the amended *projet* of the 8th article are of a more extensive nature. They relate to a question of boundary; to the privilege which we enjoyed, under the treaty of 1783, to have free access to the Mississippi, as well as the free navigation thereof; and to the liberty which the United States enjoyed, under the same treaty, of taking, drying, and curing fish within the exclusive jurisdiction of the possessions belonging to His Majesty in North America.

You did perfectly right in at once admitting that the free access to and navigation of the Mississippi, provided in the amended *projet* of the 8th article, was that to which we were no longer entitled, under the treaty of 1783, and that it was to be considered, therefore, as a stipulation in our favour, given by the American Government in return for the favourable arrangement of this boundary consented to by us in the preceding part of the same article. This must indeed be manifest, by our having proposed the two stipulations reciprocally beneficial, to form but one article.

With respect to the proposition of considering the free access to and the free navigation of the Mississippi, as an equivalent to their liberty of taking, curing, and drying fish, on our coasts, and the memorandum

of amendment which the American Commissioners delivered in at the close of the conference, you will remark to them that, even if we were to admit that the privilege and liberty in question ought to be considered as equivalents, the manner in which they have, in that memorandum, proposed to renew respectively the privilege and liberty heretofore enjoyed under the treaty of 1783, confounds all principles of reciprocity; for the American Commissioners propose a limited and restricted renewal of our former privileges, in return for an unlimited and unrestricted renewal of their former liberty.

As the conditions on which the American Commissioners may be inclined to consent to a renewal of our former privilege, and
1360 the conditions on which we may be inclined to renew the liberty the United States enjoyed of taking, drying, and curing, fish on our coasts, may lead into long discussions, which would retard the conclusion of the negotiation, and as it is very desirable that not only the conclusion of the treaty should not be delayed, but also that it should include in it an adjustment of all questions likely otherwise to create misunderstandings, you will propose the two articles contained in the Enclosure (A). By the first of these articles, the boundary is defined as already proposed; by the second, the conditions on which we shall be ready to renew the liberty heretofore given to the United States of taking, drying, and curing fish, and the conditions on which the liberty heretofore enjoyed by us of a free access to and navigation of the Mississippi shall be restored to us, are left for future negotiation.

After the declaration made by the American Commissioners that they were willing to receive the liberty of taking, drying, and curing, fish on our coasts, as an equivalent to some concession on their part, it cannot be expected that they will refuse this proposition. If the American Commissioners decline these propositions, you will not consider yourselves as authorised to sign the treaty with the omission of the amended *projet* of the 8th article, and still less with the omission of the latter part of it.

Although the American Commissioners have, in their conferences, admitted the fact that the liberty which the United States heretofore enjoyed of taking, drying, and curing, fish on our coasts, had ceased with the commencement of the war, by making the renewal of that liberty the subject of negotiation, yet it is very desirable that any point so calculated to produce altercation (unless previously understood by the two contracting parties) should not be left in the state in which the signing of the treaty, with the omission of the 8th article, would still unavoidably leave it. If, therefore, you shall not be able to bring the point to a satisfactory conclusion, either by acceding to this proposition, or by otherwise making it clear by some written document that they consider the stipulations of 1783, with respect to the liberty given them of taking, drying, and curing, fish on our coasts, as no longer in force, you will refer home for further instructions.

I am, &c.

BATHURST.

*Lord Bathurst to the Commissioners at Ghent.*FOREIGN OFFICE, *December 19, 1814.*

MY LORD AND GENTLEMEN: I had this morning the honor of receiving your despatch of the 14th, enclosing the note presented on that day by the Commissioners of the United States, and desiring instructions thereupon.

With regard to the alteration proposed in the 1st article, whereby the occupation of the islands in Passamaquoddy Bay may be reserved to us, there is no objection to the proposition contained in the American note, except so far as relates to the surrender of such islands to the United States, if no decision shall have been agreed upon, within a given number of years. This stipulation might give to the United States an interest to postpone any discussion on the subject. There would be no objection to a stipulation by which it should be provided that the right to the islands in Passamaquoddy Bay should be that point of reference on which the Commissioners should be required first to consider and decide.

With respect to the discussion which has grown out of the latter part of the 8th article, the Prince Regent regrets to find that there does not appear any prospect of being able to arrive at such an arrangement with regard to the fisheries as would have the effect of coming to a full and satisfactory explanation on that subject.

As this appears, however, now to be the only remaining point on which any difficulty exists, he is unwilling to protract by a prolongation of the discussion, the period when the war between His Majesty and the United States may be happily terminated. You will therefore present a note, in which, after referring to the language held by you on this subject from the very commencement of the negotiation, in which you stated explicitly that the British Commissioners did not intend to grant gratuitously to the United States the privileges formerly by treaty to them of fishing within the limits of the British sovereignty, and of using the shores of the British territories for purposes connected with fisheries, you will state that, as there does not appear any prospect of agreeing upon an article wherein that question may be satisfactorily adjusted, you are authorised to accept the proposition which the Commissioners of the United States proposed in the protocol of the 1st December, wherein they expressed their readiness to omit the 8th article altogether.

It will not be necessary for you to insist on the article entitled, "An Article relative to the Right of Prosecuting Suits in the Courts of Justice," as we rely upon the Courts of Justice being open in the United States, by which the just claims of British subjects may be fairly prosecuted.

I am, &c.

BATHURST.

1361 NOTES FROM LETTERS AND DESPATCHES OF LORD CASTLEREAGH,
VOL. III, 3RD EDITION.

*The Hon. Charles Bagot to Lord Castlereagh.*WASHINGTON, *August 11, 1816.*

MY DEAR LORD, I am much disappointed in not being able to acquaint you by this packet that I have already concluded the convention on the subject of the fisheries—but the fault is in the Govern-

ment, or rather the no-Government of this country, for it can scarcely be said that a Government exists here during the summer months.

Immediately after I received your Lordship's instructions I requested an interview with Mr. Monroe, at which, after a long conversation upon the subject, I brought forward the first proposition contained in Lord Melville's letter to your Lordship, which allots to the use of the United States such part of the southern coast of Labrador as lies between Mount Joli and the Esquimaux Islands. Mr. Monroe told me that if he could procure in Washington any circumstantial information respecting the proposed coast, he should be able to proceed immediately in the business; but on the following day I received a note from him stating that he had been under the necessity of writing to the Secretary of the Navy, then at Salem, beyond Boston, for the information which he required.

After repeated interviews with Mr. Monroe, he told me that he imagined that the Secretary of the Navy had sent to have the coast in question examined, and Mr. Monroe himself then went into the country, from whence he only returned yesterday. I immediately waited upon him, when he told me that the tract of coast which I had proposed had several settlements upon it; and, though convenient in point of position, it appeared to the persons who had examined it to want many of the requisite advantages. He then expressed his wish that an allotment should be given up on the eastern coast of Labrador, above the Straits of Belleisle. I told him that I could save much useless discussion upon that point by assuring him that there were insuperable objections to granting any part of that coast; but that, if the one proposed was really unsuitable, I would not disguise from him that I was authorised to offer part of another coast, which unquestionably afforded every convenience which the United States could require. I accordingly offered the second proposition, which gives the unsettled part of the southern coast of Newfoundland, from Cape Ray to the Ramen Islands.

This is the state of the business at this moment, and I expect that, in a few days, we shall come to some final agreement upon the subject; but I have already detained the packet so long, in waiting for Mr. Monroe's return to Washington, that I do not think it right to delay it any longer.

From the manner in which Mr. Monroe received the second proposition, I entertain hopes that it will be accepted, and that I shall be able to annex to the acceptance an express abandonment of all pretensions to fish or dry on any other of the coasts of British North America—at all events, that I shall not be under the necessity of yielding the two propositions, which your Lordship may be assured that I shall not do, excepting in the very last resort.

By a letter which I have received from Admiral Griffith, I learnt that he had already given orders for the seizure of all American vessels found fishing within our limits; but I wrote to him on the 6th of last month (the day after I had first seen Mr. Monroe upon this business), requesting that he would abstain as much as possible from taking any steps which might, at the present moment, embarrass the negotiation, which I confidentially acquainted him was then on foot.

I have, &c.

CHARLES BAGOT.

*The Hon. Charles Bagot to Lord Castlereagh.*WASHINGTON, *November 10, 1816.*

MY DEAR LORD, I am again disappointed in not being able to acquaint you with this packet that the convention respecting the fisheries has been concluded.

Immediately on my return to Washington, on the 14th of last month, I called upon Mr. Monroe, who had arrived a few days previously, to inquire whether he had yet received the information which he had been so long expecting, in regard to the portions of coast which I had offered for the purpose of the American fishery, and whether he was then prepared to proceed with the convention. He told me that he had received a great mass of information, and, he believed, nearly all that was requisite on the subject, but that he had had so little time to examine it that it would not be possible for him to go then into the question; but he assured me that, before the meeting of Congress, the 2nd December, he would acquaint me positively whether it was the intention of the President that the business should be proceeded in, or whether the offer which I had made would be rejected.

I have as yet only offered the choice of one of the two proposed coasts; but I begin to suspect that Mr. Monroe is alarmed at the idea of accepting any proposal by which the pretension of right which has been made must be for ever renounced. I shall certainly know the determination of the Government in the course of this month.

In the despatches which I have sent home by this packet, 1362 your Lordship will see the course which has been taken by this Government in regard to that abominable proceeding of Captain Warrington's. In the note which I have returned to that of Mr. Monroe, enclosing the Report of the Court of Inquiry, I have endeavoured to show how little satisfactory such a report is, but have tried to lay the ground for abandoning or reserving the business, as your Lordship may direct.

I have, &c.

CHARLES BAGOT.

APPENDIX (B).

NOTE ON REGULATIONS REFERRED TO BY SIR WILLIAM ROBSON, JULY 25,
1910.

Before 1783.

Newfoundland. (Br. App., 689. 1611.)

Orders issued by John Guy (Governor), binding "all persons of what nation soever."

- (1.) No ballast to be thrown out to the prejudice of the harbours.
- (2.) No harm to be done to any stages, cook-rooms, flakes, &c.
- (3.) Admirals of each harbour to take such beach or flakes as are necessary for his boats with overplus only for one boat more than he hath, and every other person to content himself with what he shall have necessary use for.

- (4.) No person to change marks of boats.
- (5.) No person to convert to his own use boats of others, except in cases of necessity and on notice to admiral.

- (6.) No person to set fire in any woods.

- (7.) No person to destroy any stage, &c. [*These shew regulations as to the use of shore in relation to drying and curing fish.*]

Instructions to John Treworgie (Commissioner for Administration of Affairs of the Commonwealth in Newfoundland) from the Council. (Br. App., 511. 1653.)

- (1.) Take care for the Government and the fishery *according to annexed laws.*

- (2.) Collect fish dues from strangers.

- (3.) Secure fishery from any disturbance or interruption—power to order vessels to keep together or otherwise dispose of themselves for common safety.

Annexed laws.

- (1.) No ballast to be thrown out to prejudice of harbours, but to be carried ashore where it does not do any annoyance.

- (2.) No person to damage any stage cook-room, &c. To be content with such stages as may be necessary.

- (3.) According to ancient custom the first to arrive to be admiral of harbour—same regulations as to reserving beach and flakes as in 1611 order. Those who have occupied several places to notify which they will choose.

- (4.) No defacement of marks of boats, and no one to use other person's boat or "train fats" without consent, nor to remove them except in case of necessity and on notice to admiral and others.

- (5.) No one to steal any fish, train, salt, &c.

- (6.) No one to set fire to woods or to damage trees by rinding except for covering of cook-rooms.

- (7.) No one to hinder hauling of seines for bait in usual places.

- (9.) No taverns.

(10.) Limits stage room occupied by any planter.

(13.) The company to assemble on Lord's Day for worship.
[*These were regulations for fishing and for drying and curing on shore.*]

Star Chamber rules. (Br. App., 512. 1660.)

Similar to 1683 regulations.

15 Chas. II, cap. 16. (Br. App., 517. 1663.)

(7.) No person to lay any net in or near any harbour to catch spawn or young fry of Poor John, or for any other use except for taking of bait.

[*Regulates fishing*].

Order in Council for *regulating* fishing trade in Newfoundland. (Br. App., 518. 1670.)

1. Subjects of His Majesty's Kingdom of England for ever to have freedom of taking bait and fishing in any of the . . . harbours or roads in or near Newfoundland, with *liberty* to land 1363 for curing, salting, and drying of fish and for cutting of wood for stages, rooms, &c., *provided* they submit to any present and future regulations.

2. No alien to take bait or fish between Cape Race and Cape Bona Vista.

4. No planter to occupy stages, beach, &c., before English fishermen are provided for.

9. No fishing vessel to leave England before the 1st March.

11. No captain to use any stage in any port, harbour or bay between Cape Race and Cape Bona Vista with less than 25 men all of one company.

13. Admirals to see to preservation of peace and good order and the execution of His Majesty's rules for *regulation of the fishery*.

15. No fishermen to remain after end of October.

10 & 11 Wm. III, cap. 25. (Br. App., 525. 1699.)

1. All His Majesty's subjects residing in England or the dominions thereunto belonging to have, use, and enjoy the free trade and are of merchandise and fishery, the freedom of taking bait and fishing in any of the . . . creeks, harbours, or roads in or near Newfoundland and the said areas, and liberty to land for curing fish and to cut down trees for making stages, &c.; and no alien (not residing in England, Wales, or Berwick) to take bait or fish in Newfoundland.

2. Repeats provisions against throwing ballast into harbours.

3. Same provisions against destroying stages, &c.

4. Provisions as to admirals, and against taking more of the beach or stages than necessary—admirals to settle differences.

12. No rinding of trees after 25th March; no setting fire to woods. No person after the 25th March to hinder hauling of seines in customary baiting places, or to shoot his seine in or upon any other seines.

14. Admirals to see to enforcement of regulations contained in the Act.

16. Sunday to be strictly observed.

Regulations by Hugh Palliser (governor). (Br. App., 690. 1765.)

1. *No colonist* (except whale fishers) to go to Labrador.

2. No person to resort to Labrador to fish or trade except ship fishers from His Majesty's dominions in Europe.

3. Regulations in 10 & 11 Wm. III, cap. 25, to apply to Labrador. *Proclamation* by Hugh Palliser.—King's officers have always had my orders to assist all vessels from the plantations employed in whale fishery, and, pursuant to His Majesty's orders to me, *all vessels from plantations* will be admitted to Labrador coast, the ancient customs as to cod fishing under 10 & 11 Wm. III, cap. 25, to be observed. (Br. App., 691. 1766.)

Whale fishers, under necessary restrictions, permitted to land in Labrador to cut up whales, a liberty never allowed to them in Newfoundland.

Prohibits whale fishers from plantations, from banking amongst boats of ship adventurers from Britain, destroying fishing works, and firing woods.

15 Geo. III, cap 31. (Br. App., 545. 1775.)

Sec. 4. The privilege of drying fish on shore is not, and shall not be, enjoyed by any of His Majesty's subjects arriving at Newfoundland except from British dominions in Europe.

Sec. 7. Fishers' vessels from Great Britain not to be restricted as to the days of fishing, and only to report at custom-house on arrival and clearance. [*Above sections repealed by 5 Geo. IV, cap. 51, sec. 1.*] (Br. App., 567.)

Nova Scotia.

Proclamation by Thomas Temple (governor) for regulating. . . fishing. (Br. App., 586. 1665.)

1. If *any person* comes into jurisdiction and . . . fishes without licence, penalty.

2. Duly observe Sunday, and not to take any *liberty* by fishing to profane the same.

3. *No vessel from New England* to come into jurisdiction and bring goods and trade without licence.

5. Licensed fishermen not to be disturbed.

6. All persons to endeavour the preserving of the fish and the banks; none to take fish during spawning season; no offal to be thrown overboard.

10 Geo. III, cap 7. (Br. App., 587. 1770.)

By Governor, Council and Assembly.

1. No fishermen to throw offal into sea *within three leagues* of shore.

United States. Massachusetts Bay.

Order of Court of . . . (Br. App., 770. 1668.)

No cod-fish, &c., to be killed to be dried, for sale in December or January. No offal to be thrown overboard at or near fishing grounds.

No mackerel to be caught, except for spending when fresh, before 1st June.

1364 Act 1692-3, cap. 32. (Br. App., 772. 1692.)

By Governor, Council and Representatives.

2. No mackerel to be caught (except for spending whilst fresh) before 1st July, and no mackerel to be caught with any sort of net or seine.

Act 1702, cap. 12. (Br. App., 773. 1702.)

By Governor, Council and Representatives.

No mackerel to be caught (except for spending whilst fresh) before 1st January.

New Hampshire.

Law of New Hampshire. (Br. App., 772. 1687.)

By Governor and Council.

No mackerel to be caught (except for spending whilst fresh) before 1st July, and no mackerel to be caught with seines.

New Plymouth.

Order of General Court. (Br. App., 770. 1668.)

Directs requests to Court of Massachusetts to restrain throwing of offal overboard.

Order of General Court. (Br. App., 770. 1670.)

Prohibition against casting ballast near shore where convenient for seine fishing or throwing offal overboard, any *inhabitant* drawing mackerel ashore to pay 6d. per barrel—any foreigner to pay 1s. 6d. per barrel.

Order of General Court. (Br. App., 771. 1672.)

Water bailiff may give *liberty* to strangers to fish with seine on paying dues.

Order of General Court. (Br. App., 771. 1677.)

The country having let their privileges of fishing at the Cape to three—agreed it shall be improved by our own people, but in case they refuse, it shall be *at the liberty* of the partners to admit any *out of the colony* to improve it with them.

Order of General Court. (Br. App., 1771. 1684.)

No mackerel to be caught with nets or seines.

New York.

Act by Governor, Council and General Assembly. (Br. App., 775. 1772.)

No person to draw seine or net of any length or set any seine or net more than 6 fathoms long, with meshes not less than 3 inches square from the 15th November to 15th April in the bays, rivers, or creeks of the County of Suffolk.

Act by Lieutenant-Governor, Council and General Assembly. (Br. App., 776. 1775.)

Prohibition against:—

(a.) Drawing nets of any length or setting nets above 6 fathoms long in bays, &c., of County of Suffolk between 15th November and 15th April.

(b.) Setting any net in Ketchabanuck Channel or within 30 rods of mouth of said channel, leading into or out of Quantuck Bay.

(c.) Setting nets in any other place in bays, &c., of said county within 4 rods of another net and that with meshes less than 3 inches square.

Between 1783 and 1812.

Newfoundland.

26 Geo. III, cap. 26. (Br. App., 555. 1786.)

Sec. II. No person concerned in fishery to use any seine or net for catching cod by hauling on shore or tucking into a boat, with mesh less than 4 inches.

Sec. 15. Forbids sale of boats, seines, bait, &c., to any alien.

Nova Scotia.

26 Geo. III, cap. 7. (Br. App., 591. 1786.)

Sec. 9. Justices to *regulate* manner of placing nets and seines in havens, rivers, creeks, and harbours of province.

1365 New Brunswick.

33 Geo. III, cap. 9. (Br. App., 595. 1793.)

By Lieutenant-Governor, Council and Assembly.

Sec. 1. No net or seine to be placed across any river, cove or creek in the province so as to obstruct course of fish.

Sec. 9. No net in harbour of St. John more than 20 fathoms long, and no net to be in water in any part of province between sunset on Saturday and sunrise on Monday.

39 Geo. IV, cap. 5. (Br. App., 597. 1799.)

By Lieutenant-Governor, Council and Assembly.

Sec. 1. Repeals Act of 1793 as to County of Northumberland.

In Bay of Miramichi and its branches no net to be set in the bay except as therein permitted (elaborate provisions as to length of nets in different places). No net to be in water between sunset Saturday and sunrise Monday.

Sec. 2. Penalty on *any person* who sets net in *Miramichi Bay* except as permitted.

Sec. 9. Magistrates to make *regulations* for fishing in all other rivers, coves and creeks in said County. [*N. B. Whole of Miramichi Bay in the County.*]

50 Geo. III, cap. 20. (Br. App., 604. 1810.)

By President Council and Assembly.

Sec. 1. No net over certain size to be set in certain parts of the harbour of St. John.

Sec. 2. No net at Shag Rocks, nor any nets fastened together, nor any drift net to be used in said harbour.

Sec. 3. No drift net more than 30 fathoms to be used above the Boar's Head in River St. John. Drift nets to be 30 fathoms apart. No nets in water between sunset Saturday and sunrise Monday.

Lower Canada.

Order by the King to Governor of Quebec. Recites *Bay of Chaleurs in Province of Quebec*. (Br. App., 554. 1785.)

Enables Governor to grant use of beach to His Majesty's subjects.

Directs Governor with consent of Provincial Council to establish *local regulations*, to prevent disputes between fishermen resorting to said beach.

Instructions to Governor of Province of Quebec. Regulations for protection of fisheries in Gulf of St. Lawrence and on Labrador coast required. (Br. App., 53. 1786.)

28 Geo. III, cap. 6. (Br. App., 592. 1788.)

By Governor and Legislative Council.

Recites *Bay of Gaspé and Bay of Chaleurs in this Province*.

Sec. 1. His Majesty's subjects to have freedom of taking bait and fishing with *liberty* to land for curing fish in certain parts.

Sec. 2. Fishermen from Great Britain may reserve necessary parts of beach.

Sec. 3. No person to rind trees or set fire to woods, or to hinder hauling of seines or shoot seine within another seine.

Sec. 4. No ballast to be thrown in harbours, and no offal to be cast into *sea within 2 leagues of shore*.

47 Geo. III, cap. 12. (Br. App., 600. 1807.)

By the King with consent of Legislative Council and Assembly of Province of Lower Canada.

Sec. 1. Freedom to His Majesty's subjects to take bait and fish with liberty to land for curing fish in certain parts.

Sec. 2. Fishermen from British dominions may reserve necessary parts of unoccupied beach.

Sec. 3. No ballast into harbours and no offal into sea *within 4 leagues of shore.*

Sec. 4. No one to annoy or obstruct hauling of seines.

Sec. 15. Magistrates may make *reasonable regulations* respecting the fisheries—particularly declare in what manner persons shall demean themselves in fishing and with what manner of nets and engines in said *rivers and streams*—and for *regulating the manner of placing seines and nets in havens, rivers, creeks and harbours in inferior District of Gaspé*—such regulations to be published—and to apply to *that part of such district to the west of Mackerel Point in Bay of Chaleur (i. e. to whole of the Bay of Chaleur.)*

1366 *Between 1812 and 20 October, 1818.*

New Brunswick.

58 Geo. III, cap. 2. (11th March). (Br. App., 605. 1818.)

By Lieutenant-Governor, Council and Assembly.

Prohibits casting of offal on or about coasts of Grand Manan or into any other bay or harbour of this province in fishing grounds. *After 1818.*

New Brunswick. (Non-treaty shores till treaty of 1854.)

4 Geo. IV, cap. 23. (Br. App., 607. 1823.)

By Lieutenant-Governor, Council and Assembly

Continues prohibition against seining in *Bay of Miramichi*, except as provided in previous Acts.

9 & 10 Geo. IV, cap. 3. (Br. App., 609. 1829.)

By Lieutenant-Governor, Council and Assembly.

Continues above Act and preceding Act.

4 Wm. IV, cap. 31. (Br. App., 612. 1834.)

By Lieutenant-Governor, Council and Assembly.

Continues preceding Acts.

16 Vict., cap. 39. (Br. App., 623. 1853.)

By Lieutenant-Governor, Council and Assembly.

1. No net across mouths of havens, creeks or harbours in various parishes in county of Charlotte, and no nets to be set in any such harbour, extending over $\frac{1}{2}$, &c., of some, or within 40 fathoms of each other or within 20 fathoms of low water mark.

3. Fish weirs to have gates.

5. Power to appoint gurry grounds, and no offal to be thrown overboard elsewhere, at or near Grand Manan.

Revised Statutes, cap. 101. (Br. App., 626. 1854.)

5. Governor in Council may grant leases for fishing-stations.

6. Governor in Council may make regulations for management and protection of fisheries.

7. Gurry grounds for offal.

12. Limits seining in certain parishes.

15. Close time for herrings.

[1855. *Communicated to Marcy.*] (Br. App., 204-5.)

Lower Canada. (Non-treaty except Magdalen Island and part of Labrador till treaty of 1854.)

4 Geo. IV, cap. 1. (Br. App., 607. 1824.)

By the King, with consent of Legislative Council and Assembly.

1. His Majesty's subjects may take bait and fish, in creeks, harbours and roads, with *liberty* to land in inferior district of Gaspé, county of Cornwallis, and part of county of Northumberland for drying and curing.

3. No offal within 6 leagues from shores.

4. Not to obstruct hauling of nets.

6. Not to use caplin and spawn for manure.

18. Grand juries may make further regulations.

25. Regulations as to export of fish.

9. Geo. IV, cap. 42. (Br. App., 610. 1829.)

By the King, with consent of Legislative Council and Assembly.

4. Grand juries may make regulations.

8. His Majesty's subjects may take bait and fish with liberty to land for curing and drying, &c.

6. Wm. IV, cap. 57. (Br. App., 615. 1836.)

By the King, with consent of Legislative Council and Assembly.

1. His Majesty's subjects may fish and land for curing, &c.

3. All ballast to be carried on shore and no offal within 6 leagues.

23. Grand Juries may make regulations.

1367 Newfoundland.

5. Geo. IV, cap. 51. (British Statute.) (Br. App., 567. 1824.)

1. 10 & 11 Wm. III, cap 25, and other Acts repealed.

2. No alien to fish in Newfoundland, always saving treaty rights.

3. His Majesty's subjects may travel to and fish at Newfoundland, with *liberty* to land to cure fish.

5. No ballast to be thrown into harbours by any person whatsoever.

6. No *person whatsoever* to hinder hauling of nets in customary baiting places or shoot his net within or upon another's net.

14. Governor may lease all "ship's rooms" not already disposed of.

2 Vict., cap. 7. (Br. App., 697. 1838.)

By Governor, Council and Assembly.

No ballast to be thrown into harbours or roadsteads.

25 Vict., cap. 2. (Br. App., 702. 1862.)

By Governor, Legislative Council and Assembly.

1. No persons to catch herring in seines on or near coast or in any bays, harbours or other places from 20th October to 12th April, and not at any time to seine for herring except by way of shooting and forthwith tucking and hauling; but herrings may be taken by nets in usual way and not used for inbarring.

2. From 20th December to 1st April, herring-nets must have 2 $\frac{1}{4}$ -inch meshes.

4. From 20th April to 20th October no herring or bait to be caught for exportation within one mile of any settlement between Cape Chapeau Rouge and Point Rosey. (*Qy.* South Coast.)

10. *This Act not to affect treaty rights.*

Consolidated Statutes, 1872, Vict. 27, cap. 102. (Br. App., 704. 1872.)

Amends and re-enacts 25 Vict., cap. 22.

18. *Act not to affect treaty rights.*

37. Vict., cap. 2. Act carrying into effect Treaty of Washington. (1874.)

39 Vict., cap. 6. (Br. App., 707. 1876.)

3. No person to catch squid in seines.

4. No person to net herring, caplin, or squid between 12 p. m. Saturday and 12 p. m. Sunday.

No proviso saving treaty rights.

40 Vict., cap. 13. (Br. App., 707. 1877.)

4th sec. of 39 Vict., cap. 6, to apply to jigging for squid and to use of any contrivance and to any mode of taking fish for bait.

No proviso saving treaty rights.

42 Vict., cap. 2. (Br. App., 708. 1879.)

1. No person to take herring by seine, &c., on or near coast or in any bays, &c., from the 20th October to the 18th April, or at any time to use seine for herring except by shooting and forthwith hauling; but herring may be taken in usual way—not used for inbarring.

No proviso saving treaty rights.

45 Vict., cap. 21. (Br. App., 709. 1882.)

1. No person to use trap for cod with meshes of less than 4 inches.

No proviso saving treaty rights.

47 Vict., cap. 8. (Br. App., 709. 1884.)

1. Owner of vessel owned and registered in Newfoundland, obtaining customs clearance may take herring for bait on bank fishery, except by inbarring.

7. Cod-traps to be 80 fathoms from any other cod-trap and 50 fathoms from any cod-net.

8. Cod-nets to be 50 fathoms from any cod-trap or cod-net.

9. Provisions against occupying fishing-ground without using it.

No proviso saving treaty rights.

48 Vict., cap. 5. (Br. App., 710. 1885.)

2. Mesh of cod-traps to be 4 inches.

No proviso saving treaty rights.

50 Vict., cap. 1. (Br. App., 711. 1887.)

1. Restrictions on catching bait for exportation without license.

Proviso saving treaty rights.

1368 51 Vict., cap. 9. (Br. App., 712. 1888.)

Amends 50 Vict., cap. 1.

52 Vict., cap. 6. (Br. App., 712. 1889.)

Repeals 1887 and 1888 Acts, and re-enacts and amends them.

Proviso saving treaty rights.

52 Vict., cap. 7. (Br. App., 717. 1889.)

Forms Fisheries Commission.

16. Power to make regulations as to methods of fishing, close time, &c.

No proviso saving treaty rights.

Regulations under 52 Vict., cap. 7. (Br. App., 718, 719. 1890-1891.)

Stringent restrictions as to methods of fishing.

1890 *rules not to apply to French coast* (Regulation 31).

Consolidated Statutes, cap. 124. (Br. App., 725. 1892.)

Stringent regulations.

28. *Proviso saving treaty rights.*

Consolidated Statutes, cap. 129. (Br. App., 727. 1892.)

Restricting exportation and sale of bait-fishes.

22. *Proviso saving treaty rights.*

61 Vict., cap. 3. (Br. App., 731. 1898.)

9. Power to regulate fisheries, forbid destruction of fish and fishing without licence.

10. *Proviso saving treaty rights.*

Regulations under 1898 Act. (Br. App., 767. 1905.)

Regulations under 1898 Act. (Br. App., 760. 1908.)

5 Ed. VII, cap. 4. (Br. App., 757. 1905.)

Foreign Fishing Vessels Act.

§ 7. *Proviso saving treaty rights.*

6 Ed. VII, cap. 1. (Br. App., 758. 1906.)

Foreign Fishing Vessels Act.

§ 14. *Proviso saving treaty rights.*

§ 17. Repeals Act of 1905.

United States—New Jersey.

General Statutes, 1896. (Br. App., 785. 1926.)

Only resident citizens of New Jersey to seine.

Delaware.

Statutes, cap. 72. (Br. App., 788. 1871.)

§ 1. No fishing in Delaware Bay except by citizens of the State.

§ 8. June–August. Certain gill seines forbidden.

§ 9. Sunday fishing forbidden.

Maryland.

Statutes, cap. 441. (Br. App., 793. 1896.)

Restricts netting in Chesapeake Bay.

NOTE.

As pointed out by Sir Robert Finlay, in his argument at p. 1154 [p. 198–9 *supra*], the Appendices to the British Case and Counter-Case do not contain all the laws passed since 1818 by the British Colonies other than Newfoundland for the regulation of the fisheries.

The statutes of New Brunswick and Lower Canada subsequent to 1818, which appear in the Appendices, were printed not for the purpose of showing the course of legislation in those colonies with reference to the regulation of the fisheries, but for other purposes, for example, to show jurisdiction exercised over bays, or to give the provisions of the statutes referred to in the Marcy Circular, &c.

Many other statutes regulating the fisheries were passed from time to time by the Dominion of Canada and by the Colonies which afterwards constituted the Dominion. If it is desired, a list of these statutes and copies thereof will be furnished to the Tribunal and to Counsel for the United States, and all proper opportunity will be afforded for the examination of the volumes which contain these statutes.

Statement of Specific Provisions of certain Legislative and Executive Acts of Newfoundland and Canada called to the attention of the Tribunal by the United States for action pursuant to Articles 2 and 3 of the special agreement of January 27, 1909.

I. Pursuant to the provisions of article 2 of the special agreement of the 27th January, 1909, the United States calls the attention of the Tribunal to certain provisions of the Acts specified in the note of the 2nd June, 1909, from the Secretary of State of the United States to the British Ambassador at Washington (United States Counter-Case Appendix, p. 5.), which provisions are claimed by the United States to be inconsistent with the true interpretation of the treaty of 1818, if applied to American fishermen on the treaty coasts, because even under the contention of Great Britain, as set out in Question 1, they are not:—

(a) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said article 1 the inhabitants of the United States have therein in common with British subjects;

(b) Desirable on grounds of public order and morals;

(c) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the later class,

and also because under the contention of the United States as set out in such question they are not:—

(a) Appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

(b) Reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and so framed as not to give an advantage to the former over the latter class.

The specific provisions herein called to the attention of the Tribunal are set out in the First and Second Schedules hereto annexed.

II. Pursuant to article 2 of the special agreement of the 27th January, 1909, the United States calls upon the Tribunal to express in its award its opinion upon the aforesaid provisions so specified and called to its attention, and to point out in what respects they are inconsistent with the principles laid down in the Award in reply to Question 1.

III. If the Award of the Tribunal be in favour of the British contention as stated in Question 1, the United States will ask that the Tribunal refer to a commission of expert specialists for a report thereon, in accordance with article 3 of the special agreement aforesaid, such of the specific provisions set forth in the First and Second Schedules as require an examination of the practical effect thereof in relation to the conditions surrounding the exercise of the liberty of

fishery, or require expert information about the fisheries themselves, for the determination of their appropriateness, necessity, reasonableness, and fairness as defined in Question 1.

IV. The United States objects also to the provisions set out in the First and Second Schedules, if applied to American fishermen on the treaty coasts, because their appropriateness, necessity, reasonableness, and fairness, within the meaning of subdivision (c) of the contention of the United States, under Question 1, have not been determined between the United States and Great Britain by common accord, and the United States has not concurred in their enforcement.

Concurrence in the enforcement of regulations concerns particularly the manner of their enforcement so as to secure impartiality in administration, and to ensure their observance by Newfoundland, Canadian, and British fishermen equally with American fishermen.

There are many other provisions to which, if applied to American fishermen, the same objection on the part of the United States applies, but it has not been deemed necessary to enumerate them because it is assumed that the award upon Question 1 will dispose of this ground of objection one way or the other.

It is not to be inferred that the Government of the United States would refuse to subject American fishermen on the treaty coasts to such regulations, provided that it is offered an opportunity to have a voice regarding them.

V. Many other provisions of the acts specified in the aforesaid note of the 2d June, 1909, are deemed by the United States to be beyond the competency of Canada, Newfoundland or Great Britain to enforce against American fishermen without the consent of the United States. As no instance has occurred of the enforcement thereof against the fishermen of the United States, no question has yet arisen regarding them. The United States has not been consulted regarding them, or advised of the reasons for such regulations, and is not called upon to determine whether such regulations would be reasonable, necessary, or appropriate if applied to American fishermen on the treaty coasts. The United States, therefore, considers that any question under these regulations will be a question hereafter arising and subject to the provisions of article 4 of the special agreement.

1370 VI. The United States assumes that the numerous provisions in the statutes specified in the aforesaid note of the 2d June, 1909, which relate to customs regulations and to the imposition of light, harbor, and other dues referred to in Questions 3 and 4 will be disposed of by the Award upon those Questions, but if not so disposed of the United States considers that it will be entitled to have the opinion of the Tribunal thereon specifically.

The specific provisions to which the United States calls the attention of the Tribunal in this connection are set out in the Third Schedule hereto annexed.

FIRST SCHEDULE.

Specific provisions in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts, and (2) the methods, means, and implements to be used in the taking of fish or in the car-

rying on of fishing operations on the treaty coasts, which specific provisions the United States claims are not appropriate, necessary, reasonable, and fair, as defined in Question 1, if applied to American fishermen on the treaty coasts:—

NEWFOUNDLAND.

Consolidated Statutes, 1892, Chapter 124.

1. No person shall haul, catch or take herrings by or in a seine or other such contrivance, on or near any part of the coast of this colony or its dependencies, or in any of the bays, harbours, or other places therein, at any time between the twentieth day of October in any year and the eighteenth day of April in the following year, or at any time use a seine or other contrivance for the catching or taking of herring, except by way of shooting and forthwith hauling the same, under a penalty not exceeding two hundred dollars: Provided, that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in-barring or enclosing herrings in a cove, inlet or other place. This section shall not apply to the coast of Labrador.

2. The owners, masters, and other persons managing or controlling vessels conveying herrings in bulk, between the twentieth day of October in any year and the eighteenth day of April in the following year, shall be deemed to have hauled, caught or taken such herrings contrary to the provisions of the preceding section of this chapter, unless such owner, master or other person aforesaid shall make proof to the contrary.

5. Notwithstanding any of the provisions of this chapter it shall be lawful for the owner of any vessel owned and registered in this Colony, which shall be fully fitted out, supplied and ready to prosecute the Bank fishery, and shall have obtained a Customs' clearance for the said fishery, to haul, catch and take herring at any time and by any means, except by in-barring and enclosing such herring in a cove, inlet or other place, to an extent not exceeding sixty barrels for any one voyage, to be used as bait in prosecuting the said Bank fishery in the said vessel.

12. No person shall, at any time haul, catch or take squids within, or by means of any seine, bunt, or other such contrivances.

13. No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night take or catch in any manner whatever or by any contrivance whatsoever, any herring, caplin, squid, or any other bait fish, or set or put out any contrivance whatsoever, for the purpose of taking or catching herring, caplin, squid or other bait fish.

23. After two years from the ninth day of May, 1888, it shall be unlawful for any person to use any cod-trap, for the purpose of catching or taking any cod-fish on the coast of this colony or its dependencies.

Act of March 3, 1898. (61 Vict., cap. 3.)

9. The Governor in Council may, from time to time, make regulations for the better management and regulation of the sea, coast, and

inland fisheries, to prevent or remedy the obstruction and pollution of streams, to regulate and prevent fishing, to prohibit the destruction of fish, and to forbid fishing except under authority of leases or licenses; which regulations shall have the same force and effect as if herein enacted, and may fix such modes, times or places as are deemed by the Governor in Council adapted to different localities, or otherwise expedient.

Fishing Rules and Regulations, 1908.

Lobster Fishery.

9. (As amended.) No person shall spear or hook lobsters or use hand traps in the waters of this Colony, nor shall any person purchase, can, or in any way use or export lobsters so taken.

Herring Fishery.

19. Herring may be caught in nets or hauled in seines, and other contrivances, under the conditions and in the manner prescribed by these rules, and not otherwise.

20. . . . No purse seine shall be used in the waters of Newfoundland.

1371 21. Unless otherwise provided, no person shall use a seine for the purpose of catching herring in any of the waters of Newfoundland, except exclusively for bait and for immediate use for that purpose in the fisheries, between the first day of April and the first day of August in any year.

23. No person shall catch or take herring in a seine between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, under a penalty not exceeding one hundred dollars.

25. No herring seine or herring trap shall be used for the purpose of taking herring on that part of the coast from Cape La Hune on the West Coast, and running by the West and North through the Straits of Belle Isle to Cape John.

Cod Fishery.

51. Any person using a herring seine or caplin seine on the coast of this Island to take or haul cod-fish shall be guilty of a violation of these rules.

62. No bultows shall be used on the fishing grounds from Cape La Hune to Cape Ray, both inclusive, in the district of Burgeo and La Poile.

63. (As amended). No person shall place in the waters of the Labrador Coast, any cod-trap, or cod-trap leader or mooring, nor shall it be lawful for any person to put out any contrivance whatsoever for the purpose of securing a trap-berth on that portion of the coast:—from Blanc Sablon to Gull Island, near the north-east point of Square Island, before noon of the first day of June; nor from Gull Island to a line drawn east and west (magnetic) from Collingham Island in Table Bay, before noon of the fifth day of June; nor from Collingham Island to Cape Porcupine before noon of the tenth day of June; nor from Cape Porcupine to Red Point on Byron's Island before noon of the fifteenth day of June; nor from Red Point to a line drawn east and west from a point two miles north-east of East Turnavik before noon of the twentieth day of June; nor from Turnavik to a line drawn east and west from Thumb Island near

Cape Harrigan before noon of the fifth day of July; nor from Thumb Island north, before noon of the tenth day of July in any year. Provided that when any of the above dates fall on Sunday it shall be lawful to set the cod-trap or cod-trap leader, at or after noon on the day previous (Saturday). If any person shall set a cod-trap leader on the fishing grounds after the above dates, in order to secure the place for the setting of his cod-trap, and such person shall fail to set such cod-trap within four days after setting out such leader, it shall be lawful for any other person who may desire to secure the place where such leader was so set out for the setting of his (the latter's) cod-trap, to remove such leader, and then set his own leader or cod-trap in place thereof, and the latter shall be subject also to the provisions of this section as against any other who may so desire to set a leader of cod-trap; provided that if any person after setting his cod-trap leader shall be *bonâ fide* prevented by stress of weather or ice from setting his cod-trap within the said four days, such period shall be computed from the time at which the weather or ice shall permit of his setting such cod-trap.

No bultows or trawls shall be used before the fifteenth day of August in any year on the fishing grounds within three miles of the Coast of Labrador or Islands on said Coast between a line to be drawn south-east from Cape Charles and a line drawn from east and west from White Islands in Domino Run.

No cod-trap shall be set in Blackguard Bay, Labrador, except from the mainland or islands and rocks above water, inside a line to be drawn from Curlew Point, thence to Long Island Head to the north-west end of the Western Hare Island.

64. The use of cod-traps is entirely prohibited in Port-au-Port Bay; that is to say, in East and West Bay, and extending from Long Point (or the Bar) to Bear Head, north of Serpentine River, in the District of St. George.

(Added.) The use of trawls or bultows is prohibited on the fishing grounds inside one mile from the shore in Pinnaire Bay in the Straits of Belle Isle.

General.

77. No person shall, at any time, in the waters of Newfoundland, haul, catch, or take squid within or by means of any seine, bunt, or other such contrivance.

78. No person shall between the hours of twelve o'clock on Saturday and twelve o'clock on Sunday night, take or catch in any manner whatsoever, any herring, caplin, squid, or any other bait fish, or set or put out any contrivance whatsoever, for the purpose of taking or catching herring, caplin, squid, or other bait fish. Caplain may be taken for fertilizing purposes by farmers or their employees during the usual season.

79. No person shall dig, take, buy, sell, ship or put, or assist in shipping or putting on board any boat, ship or vessel, or carry in or on board of any ship, vessel or boat, any clams, mussels, scallops, cock-and-hens, or other shell fish, for the purpose of exportation, or for any other purpose, except that of being *bonâ fide* for bait for the fisheries of this Colony, or of the same as prosecuted therefrom, or under a foreign fishing license in accordance with the rules thereon: Provided that any such shell fish may be taken for local food purposes and for boiling and canning.

CANADA.

Revised Statutes, 1906, Chapter 45.

Whale Fishing.—9.

No one shall at any time engage in the manufacture from whales of oil or other commercial products, and no vessel or boat shall be employed in the whale fishery, except under license from the Minister.

1372 6. The fee charged on each such license shall be eight hundred dollars for the first year, one thousand dollars for the second year, and twelve hundred dollars for the third and each ensuing year, and the fee on all subsequent licenses for the same factory shall be twelve hundred dollars; such fee shall be payable to the Minister of Marine and Fisheries, first on the issue of the license, and on the first day of July in each year thereafter: Provided, that the Governor in Council, after the first two years, may exact, in lieu of such fee, a sum equal to two per centum of the gross earnings of each factory, which shall be payable as aforesaid.

9. Boats known as tow-boats shall not be used by anyone in the prosecution of the whaling industry, and no vessel other than the vessel from which the whales have been captured or killed, shall, by any method or contrivance, bring or tow into port any whale for manufacture or other purpose; but nothing in this section shall prevent any one, other than the holder of a license, or his employees, from towing any dead whale to land, and having it manufactured or otherwise disposing of it in accordance with the provisions of this section.

General Prohibitions.

47. No one shall fish for, take, catch or kill fish in any water, or along any beach, or within any fishing limits, described in any lease or license, or place, use, draw or set therein any fishing gear or apparatus, except by permission of the occupant under such lease or license for the time being, or shall disturb or injure any fishery: Provided that the occupation of any fishing station or waters so leased or licensed for the express purpose of net fishing shall not interfere with the taking of bait used for cod-fishing, or prevent angling for other purposes than those of trade and commerce.

(7.) No one shall use a bag-net, trap-net or fish pound, except under a special license, granted for capturing deep-sea fish other than salmon.

(14.) From the time of low water nearest six of the clock in the afternoon of every Saturday, to the time of low water nearest six of the clock in the forenoon of every Monday, in tidal waters, and from six of the clock in the afternoon of every Saturday to six of the clock in the forenoon of the following Monday, in non-tidal waters, all sedentary fishing stations and weirs, and all pound and trap-nets, seines, gill-nets and other apparatus used for catching fish, whether under license or not, shall be so raised, closed or adapted as to admit of the free passage of fish through, by or out of such apparatus; and during such close time no one shall catch fish in such apparatus, whether under license or not.

48. No one shall use purse seines for the capture of fish in any of the waters of Canada: Provided, that the Minister may issue special fishery licenses for the use of purse seines in certain waters in the Province of British Columbia specified in the said licenses. (3 Edw. VII, cap. 23, sec. 2.)

Order-in-Council, September 12, 1907, promulgating Fishery Regulations.

GENERAL FISHERY REGULATIONS.

Sec. 5.—Lobster Fishery.

13. No one shall prepare to fish for lobsters by placing or setting any buoys, lines or other gear used in connection with such fishing, before six o'clock in the morning of the day on which it is lawful to take or catch lobsters in the locality affected.

Sec. 7.—Quahaug or Hard-shell Clams.

1. No one shall fish for or catch hard-shell clams or quahaugs without a license from the Minister of Marine and Fisheries. The fee on each such license shall be one dollar per season.

SPECIAL FISHERY REGULATIONS. PROVINCE OF QUEBEC.

Sec. 5.—Cod.

No person shall carry on cod-fishing with seines at a less distance than one-half mile from any fishing grounds where fishing boats are anchored, and fishermen are actually engaged in fishing for cod-fish with hooks and lines.

Cod-fishing in the Gulf of St. Lawrence (Quebec).

1. Fishing by means of cod trap-nets without a license from the Minister of Marine and Fisheries is prohibited in the waters of the Gulf of St. Lawrence.

4. The leader of each cod trap-net shall, in every case, extend from the shore, and any fishery Officer may determine in writing, or orally, the length of the leader that shall be used.

6. The fee on cod trap-nets shall be fifty cents for each fathom in length of leader, and such fee shall be payable in advance.

Sec. 8.—Herring.

1. (a.) Fishing by means of herring trap-nets without a license from the Minister of Marine and Fisheries is prohibited in the waters of the Gulf of St. Lawrence.

(d.) The leader of each herring trap-net shall in every case extend from the shore, and any fishery Officer may determine in writing, or orally, the length of leader that shall be used.

1373 (e.) The fee on herring trap-nets shall be fifty cents on each fathom in length of leader, and such fee shall be payable in advance.

Sec. 9.—Leases and Licenses.

Fishing by means of nets or other apparatus without leases or licenses from the Minister of Marine and Fisheries, under the provisions of the "Fisheries Act" and section 8 thereof, or from some

duly authorized officer of the Government of the Province of Quebec, is prohibited in the Province of Quebec.

Sec. 18.—Salmon.

2. From the time of low water nearest six o'clock in the afternoon of every Saturday to the time of low water nearest six o'clock in the forenoon of every Monday no one shall fish for, catch or kill salmon in tidal waters.

SECOND SCHEDULE.

Specific provisions in respect of other matters relating to fishing of a similar character to those mentioned in subdivisions (1) and (2) of Question 1, which specific provisions the United States claims are not appropriate, necessary, reasonable and fair, as defined in Question 1, if applied to American fishermen on the treaty coasts.

NEWFOUNDLAND.

Act of June 15, 1905.

1. Any Justice of the Peace, Sub-collector, Preventive Officer, Fishery Warden or Constable, may go on board any foreign fishing vessel being within any port on the coasts of this Island or hovering in British waters within three marine miles of any of the coasts, bays, creeks or harbours in this Island, and may bring such foreign vessel into port, may search her cargo and may examine the master upon oath touching the cargo and voyage; and the master or person in command shall answer truly such questions as shall be put to him under a penalty not exceeding five hundred dollars. And if such foreign fishing vessel has on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery, purchased within any port on the coasts of this Island or within the distance of three marine miles from any of the coasts, bays, creeks, or harbours of this Island, or if the master of the said vessel shall have engaged or attempted to engage, any person to form part of the crew of the said vessel in any port or on any part of the coasts of this Island, or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited.

3. In any prosecution under this Act, the presence on board any foreign fishing vessel in any port of this Island, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfits or supplies for the fishery, shall be *prima facie* evidence of the purchase of the said bait fishes and supplies and outfits within such port or waters.

Fishing Rules and Regulations, 1908.

Herring Fishery.

39. No person shall place herring on a scaffold in warm weather.

CANADA.

Revised Statutes, 1906, Chapter 45.

Powers of Fishery Officers and other Justices.

69. Every subject of His Majesty may use vacant public property, such as by law is common and accessory to public rights of fishery and navigation, for the purposes of landing, salting, curing and drying fish, and may cut wood thereon for such purposes, and no other person shall occupy the same station unless it has been abandoned by the first occupant for twelve consecutive months; and at the expiration of that period any new occupier shall pay the value of flakes and stages and other property thereon, of which he takes possession, or the buildings and improvements may be removed by the original owner.

Revised Statutes, 1906, Chapter 47.

Boarding and Search.

5. Any commissioned officer of His Majesty's navy, serving on board any vessel of His Majesty's navy cruising and being in the waters of Canada for the purpose of affording protection to His Majesty's subjects engaged in the fisheries, or any commissioner officer of His Majesty's navy, fishery officer or stipendary magistrate, on board of any vessel belonging to or in the service of the Government of Canada, and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, sheriff, justice of the peace or other person duly commissioned for that purpose may go on board of any ship, vessel or boat within any harbour in Canada, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in Canada, or in or upon the inland waters of Canada, and stay on board so long as she remains within such harbour or distance. R. S., c. 94, s. 2.

6. Any one of the officers or persons herein before mentioned, may bring any ship, vessel, or boat, being within any harbour in Canada, or hovering in British waters, within three marine miles of any of the coasts, bays, creeks or harbours in Canada, or in or upon the inland waters of Canada, into port, and search her cargo, and may also examine the master or person in command upon oath touching the cargo and voyage. R. S., c. 94, s. 3 and 20.

Order-in-Council, September 12, 1907, promulgating Fishery Regulations.

GENERAL FISHERY REGULATIONS.

Sec. 5.—Lobster Fishery.

12. No one shall, for canning purposes, boil lobsters on board any ship, vessel, boat or floating structure of any description whatever, except under special license from the Minister of Marine and Fisheries.

THIRD SCHEDULE.

Specific provisions in respect of customs regulations, and light, harbour, and other dues referred to in Questions 3 and 4, which are

claimed by the United States to be inconsistent with the true interpretation of the treaty if applied to American fishermen and executed against them in such a manner as to restrict them in the free exercise of their treaty liberties and privileges.

NEWFOUNDLAND.

Act of March 30, 1898.

Report and Entry Inwards.

22. The master of every vessel coming from any port or place out of this Colony, or coastwise, and entering any port in this Colony, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Custom House for the port or place of entry where he arrives, and there make a report in writing to the collector or other proper officer, of the arrival and voyage of such vessel, stating her name, country and tonnage, the port of registry, the name of the master, the country of the owners, the number and names of the passengers, if any, the number of the crew, and whether the vessel is laden or in ballast, and if laden, the marks and numbers of every package and parcel of goods on board, and of the sorts of goods and the different kinds of each sort contained therein, and where the same was laden, and the particulars of any goods stowed loose, and where and to whom consigned, and where any, and what goods, if any, have been laden or unladen, or bulk has been broken during the voyage, what part of the cargo and the number and names of the passengers which are intended to be landed at that port, and what and whom at any other port in this Colony, and what part of the cargo, if any, is intended to be exported in the same vessel, and what surplus stores remain on board, as far as any of such particulars are or can be known to him.

Entry Outwards.

96. Except as provided by section 112, the master of every vessel bound outwards from any port in this Colony to any port or place out of this Colony, or on any voyage to any place within or without the limits of this Colony, or coastwise, shall deliver to the collector or other proper officer a report in writing outwards under his hand, of the destination of such vessel, stating her name, country, and tonnage, the port of registry, the name of the master, the country of the owners and the number of the crew; . . .

97. The master of every vessel, whether in ballast or laden shall, before departure, come before the collector, or other proper officer, and answer all such questions concerning the vessel, and the cargo, if any, and the crew, and the voyage, as are demanded of him by such officer, and if required, shall make his answers or any of them part of the declaration made under his hand. . . .

98. If any vessel departs from any port or place in this Colony without a clearance, or if the master delivers a false content, or does not truly answer the questions demanded of him, * * * the master shall incur a penalty of four hundred dollars; and the vessel shall be detained in any port in this Colony until the said penalty is paid; and unless payment is made within twenty days, such vessel may, after the expiration of such delay, be sold to pay such penalty,

and any expenses incurred in detaining, keeping and selling such vessel.

112. Entry outwards of any vessel bound from the coasts of Labrador to any place out of this Colony, shall be made according to sections ninety-six and ninety-seven of this Act: Provided that should the master of any vessel by reason of the absence of the collector or by reason of his inability to reach the collector, be prevented
1375 from clearing his vessel in conformity with the provisions of the above-quoted sections of this Act, the owners, shippers or consignors of the cargo on board such vessel shall deliver to the collector at St. John's at the earliest opportunity, an entry, in the form required by section one hundred of this Act, of such parts of the cargo as have been shipped by them respectively, and in case of such person neglecting or refusing to deliver such entry to the collector at St. John's, they shall incur a penalty of two hundred dollars.

Protection of the Revenue.

* 118. If any vessel is found hovering in British waters, within one league of the coasts or shores of this Colony, any officer of Customs may go on board and enter into such vessel, and stay on board such vessel while she remains within the limits of this Colony or within one league thereof; and if any such vessel is bound elsewhere, and so continues hovering for the space of twenty-four hours after the master has been by such officer of Custom, required to depart, such officer may bring the vessel into port, and examine her cargo, and if any goods, the importation of which into this Colony is prohibited are on board, such vessel, with her apparel, rigging, tackle, furniture, stores and cargo, shall be seized and forfeited; and if the master or person in charge refuses to comply with the lawful directions of such officer, or does not truly answer such questions as are put to him, respecting such ship or vessel or her cargo, he shall incur a penalty of four hundred dollars.

121. If any vessel enters any place other than a port of entry, unless from stress of weather or other unavoidable cause, any dutiable goods on board thereof, except those of an innocent owner, shall be seized and forfeited, and the vessel, if of less value than eight hundred dollars, may be seized, and the master or person in charge thereof shall incur a penalty not exceeding four hundred dollars, and the vessel may be detained until such penalty is paid; and unless payment is made within thirty days, such vessel, may, after the expiration of such delay, be sold to pay such penalty, and any expenses incurred in making the seizure and in the safe keeping and sale of such vessel.

122. If any vessel worth more than eight hundred dollars, enters any place other than a port of entry, unless from stress of weather or other unavoidable cause, and dutiable goods on board thereof except those of an innocent owner, shall be seized and forfeited, and the vessel may be seized, and the master or person in charge thereof shall incur a penalty of eight hundred dollars; and the vessel may be detained until such penalty is paid; and unless payment is made within thirty days, such vessel may, after the expiration of such delay, be sold to pay such penalty, and any expenses incurred in making the seizure in the safe keeping and sale of such vessel.

Act of July 19, 1899—An Act relating to Light Dues.

1. Upon every merchant vessel or ship entering any port or place within this colony, other than coasting, sealing or fishing vessels owned and registered in this colony, there shall be levied and paid once in every calendar year (but not oftener than once in three months) the following duty or rate per registered ton, that is to say:—At the rate of twenty-four cents per ton up to and including 500 tons, and twelve cents per ton additional on every ton over 500 up to and including 1,000 tons, and six cents per ton additional on every ton over 1,000 tons and up to and including 2,000 tons. On no ship or vessel shall a greater rate than two hundred and forty dollars be levied in any one calendar year or oftener than once in three months.

9. Any officer duly authorized by law to collect rates or dues under this Act may go on board any vessel, being within three miles of any part of the coasts of this colony, and stay on board while she remains in port or within such distance, and may, in addition to the powers and procedure prescribed in section 5 of this Act, bring into port and detain such vessel until payment or satisfaction of all light dues by law recoverable.

CANADA.

Revised Statutes, 1906, Chapter 48.

16. The master of every vessel coming from any port or place out of Canada, or coastwise, and entering any port in Canada, whether laden or in ballast, shall go without delay, when such vessel is anchored or moored, to the Custom-house for the port or place of entry where he arrives, and there make a report in writing to the collector or other proper officer, of the arrival and voyage of such vessel.

96. The master of every vessel bound outwards from any port in Canada to any port or place out of Canada, or on any voyage to any place within or without the limits of Canada, coastwise or by inland navigation, shall deliver to the collector or other proper officer a report outwards under his hand of the destination of such vessel, stating her name, country and tonnage, the port of registry, the name of the master, the country of the owners and the number of the crew.

98. The master of every vessel whether in ballast, or laden, shall, before departure, come before the collector or other proper officer, and answer all such questions concerning the vessel and the cargo, if any, and the crew and the voyage, as are demanded of him by such officer, and, if required, shall make his answers or any of them part of the declaration made under his hand.

1376

Revised Statutes, 1906, Chapter 113.

Pilotage Dues.

430. The Governor in Council may from time to time, make the payment of pilotage dues compulsory or not compulsory, within the limits of any pilotage district fixed by the Governor in Council under this Part. R. S., c. 80, s. 13.

471. No Customs officer shall grant a clearance to any ship liable to pilotage dues at any port in Canada, where there is a duly constituted pilotage authority which collects the pilotage dues and at which pilotage dues are payable, until there has been produced to such Customs officer a certificate from the pilotage authority of the district or some officer or person authorized by such authority to grant the same, that all pilotage dues in respect to such ship have been paid or settled for to the satisfaction of such authority. R. S., c. 80, s. 53.

Compulsory Payment of Pilotage Dues and Exemptions.

475. Every ship which navigates within either of the pilotage districts of Quebec, Montreal, Halifax or St. John, or within any pilotage district within the limits of which the payment of pilotage dues is, for the time being, made compulsory by order in council under this Part shall pay pilotage dues, unless,—

(a) such ship is on her inward voyage and no licensed pilot offers his services as a pilot; or

(b) she is exempted under the provisions of this Part, from payment of such dues. R. S., c. 80, s. 58.

476. If such ship is on her outward voyage and the owner or master of such ship does not employ a pilot or give his ship into the charge of a pilot, such dues shall be paid, if in the pilotage district of Quebec, to the Quebec Pilots Corporation, and, if in any other pilotage district to the pilotage authority of such district. R. S., c. 80, s. 58.

APPENDIX (D).

Note on Legislation as to Light Dues and Customs Regulations referred to by Sir William Robson, July 29, 1910.

Legislation as to,—

- (1.) Light dues.
- (2.) Customs regulations.

(A.)—BEFORE 1783.

(1.) Light dues, &c.

Massachusetts, 1715, *cap.* 4, *secs.* 2 and 5, imposed dues for erection and maintenance of lighthouse at Boston Harbour. Coasting and fishing-boats to pay on a lower scale. (B. C. App., 773. 1715.)

Massachusetts, 1751, *cap.* 2. All vessels to pay additional dues, proportioned to tonnage, for repairing damage to lighthouse. (B. C. App., 774. 1751.)

Nova Scotia, 23 *Geo. II*, *cap.* 2. Merchant vessels to pay dues for maintaining lighthouse on Sambro Island; fishing-vessels exempt. (B. C. App., 587. 1759.)

Massachusetts, 1771, *cap.* 35, *sec.* 1. All vessels to pay dues for erection of a lighthouse at Matchen Island. Scale of dues as in Act of 1715. (B. C. App., 774. 1771.)

Massachusetts, 1774, *cap.* 2. All vessels of 15 tons and upwards to pay dues for maintenance of lighthouse on Brant Point. (B. C. App., 775. 1774.)

(This Act recites that the burden of these dues “ought in equity to be borne by all vessels receiving advantage from that light, belonging to strangers as well as to the said inhabitants.”)

(2.) Customs regulations.

13 & 14 *Chas. II*, *cap.* 11, required masters of all vessels arriving in England forthwith to enter at Customs. (B. C. C. App., 209. 1662.)

7 & 8 *Wm. III*, *cap.* 22, applied the provisions of the foregoing Act to all vessels arriving in British Colonies in America. (B. C. App., 521. 1696.)

4 *Geo. III*, *cap.* 15, gives power to revenue authorities to visit and expel any foreign vessel hovering within 2 leagues of coast of a colony. (B. C. App., 531. 1763.)

7 *Geo. III*, *cap.* 46, provides for entry and clearance of all vessels arriving at any British Colony in America or departing therefrom, and for declaration on oath by the master as to the business, destination, and cargo of his vessel. (B. C. C. App., 221. 1767.)

(N. B.—The provisions of section 9 of this Act are substantially those now in force in Canada, Newfoundland, and United States.)

1377 *Nova Scotia*, 8 & 9 *Geo. III*, cap. 18. "All masters of ships, coasting, fishing, and all other vessels" to make report within twenty-four hours of arrival and declaration on oath as to alcoholic liquors. (B. C. C. App., 233. 1769.)

15 *Geo. III*, cap. 31 (*Imperial Act*, 1755). Passed with the object of encouraging English seamen to engage in the Newfoundland fishery, exempts such seamen so engaging (section 7) from "entry at the customs-house at Newfoundland, except a report to be made by the master on his first arrival there, and on his clearing out from thence"—a fee not exceeding 2s. 6d. to be taken for each report. By section 8 any fishing-vessel clearing out with any goods on board, except fish or fish-oil, is to be subject to all the usual "securities, restrictions, and regulations"—which would include the heavy fees imposed under 5 *Geo. III*, cap. 45, sec. 27. (B. C. App., 545. 1775. B. C. C. App., 219. 1765.)

(B.)—1783–1818.

(1.) Light dues, &c.

Nova Scotia, 28, *Geo. III*, cap. 3. Levies light dues on all merchant-vessels entering or leaving Shelburne Harbour, other than coasting or fishing-vessels belonging to the province (coasting and fishing-vessels not belonging to the province being apparently included in the term "merchant-vessels.") (B. C. App., 591. 1787.)

New Brunswick, 28 *Geo. III*, cap. 4. Imposes dues for support of lighthouse at port of St. John upon all vessels other than coasting or fishing-vessels belonging to the said port. (B. C. App., 593. 1788.)

Nova Scotia, 33 *Geo. III*, cap. 16, enacted that all registered vessels owned by any person within the province and not wholly employed in the fisheries thereof, which did not come into the harbour at Halifax or Shelburne and pay dues there, should pay 4d. per ton in the port to which they belonged. (B. C. App., 594. 1793.)

Collectors of dues appointed in the various ports, and penalties of fine and detention imposed for refusal to pay.

Nova Scotia, 35 *Geo. III*, cap. 3, amending the last Act; dues to be payable on arrival. (B. C. App., 597. 1795.)

Imperial Act, 42 *Geo. III*, cap. 43, imposes harbour dues in North American colonies. (B. C. App., 563. 1802.)

Nova Scotia, 43 *Geo. III*, cap. 5, levied dues for maintenance of lighthouse at Annapolis on same scale as those at Halifax; dues leviable at Shelburne placed on same basis. (B. C. App., 600. 1803.)

United States, 1804, cap. 57, imposes dues on all foreign vessels entering any port of United States. No exemption for fishing vessels. (B. C. App., 783. 1804.)

Nova Scotia, 49 *Geo. III*, cap. 9. All vessels entering Bay of Fundy to pay dues for support of lighthouse at Briar Island, as payable at Halifax. (B. C. App., 602. 1809.)

New Brunswick, 50 *Geo. III*, cap. 5, imposes dues for maintaining beacons, buoys, &c., on all vessels entering Miramichi and certain other bays. (B. C. App., 603. 1810.)

Nova Scotia, 52 *Geo. III*, cap. 4, levies dues at Liverpool Harbour for support of lighthouse at Coffin's Island; rates as at Halifax. (B. C. App., 604. 1812.)

(2.) Customs regulations.

Prince Edward Island, 25 *Geo. III*, cap. 4, sec. 4. "All masters of ships, coasting, fishing, and all other vessels" to make report within twenty-four hours, and declaration on oath as to alcoholic liquors. (B. C. App., 588. 1785.)

United States, 1789, cap. 5. Master of every foreign vessel to report and deliver manifest within forty-eight hours of arrival. (B. C. App., 777. 1789.)

United States, 1790, cap. 35. Report to be made within twenty-four hours by master of every vessel, and clearance to be obtained before departure. Revenue officers to have power to board and search any vessel in harbour or within 4 leagues of coast. (B. C. App., 779. 1790.)

United States, 1793, cap. 8, sec. 21. Any fishing-vessel intending to touch and trade must obtain leave, make entry, and deliver manifest. (B. C. App., 782. 1793.)

United States, 1799, cap. 22, sec. 60. Master of every foreign vessel compelled by distress or other necessity to put into any port of United States must report in writing within twenty-four hours. (B. C. App., 782. 1799.)

New Brunswick, 47 *Geo. III*, cap. 10, sec. 3. Master of "any ship or vessel" to make report within twenty-four hours of arrival. (B. C. C. App., 234. 1807.)

N. B.—It appears from report and table of fees taken by customs officers in Nova Scotia and Newfoundland in 1790 that anchorage fees were charged, and that there was a customs-house at Newfoundland as early as 1762. (B. C. C. App., 171.)

(C.)—1818-1910.

(1.) Light dues, &c.

Newfoundland, 4 *Wm. IV*, cap. 4, imposed dues for maintenance of lighthouse at St. John's upon all vessels except coasting and fishing-vessels. (B. C. App., 694. 1834.)

Newfoundland Acts of 1835, 1839, 1852, imposed dues on all vessels, but coasting and fishing vessels were to pay on a lower scale. (B. C. App., 695, 697, 699.)

1878 Subsequent Acts of 1855, 1872, and 1878, and the Act now in force in Newfoundland (62 & 63 Vict., cap. 19), exempt from light dues coasting and fishing-vessels owned and registered in the colony. (B. C. App., 700, 703, 708. B. C. App., 754. 1899.)

Act of 1892, exempting fishing-vessels from payment of Harbour dues at St. John's. (B. C. App., 724. 1892.)

Nova Scotia Acts of 1819, 1822. ("All vessels and ships of every country, kind, and description") impose dues for maintenance of lights on Coffin Island and Cranberry Island respectively. (B. C. App., 605, 606. 1819, 1822.)

Nova Scotia Act of 1834, imposes light dues on "all coasting and fishing-vessels." (B. C. App., 612. 1834.)

Nova Scotia Act of 1838, gives partial relief from light dues to vessels registered in the Province and engaged in coasting or fishing. (B. C. App., 616. 1838.)

Nova Scotia Act of 1845, gives reduction of light dues to registered vessels of the Province. (B. C. App., 619. 1845.)

Nova Scotia Act of 1852 to the same effect. (B. C. App., 621. 1852.)

New Brunswick Acts of 1832, 1833, exempts from light dues coasters and fishing-vessels wholly employed in Bay of Fundy; but if they make voyages outside the Bay dues are to be paid. (B. C. App., 610, 611. 1832, 1833.)

Prince Edward Island Acts of 1852 and 1856, impose light and anchorage dues on all vessels, with an abatement to registered vessels of the colony. (B. C. App., 621, 627. 1856.)

United States Act of 1886, imposes light dues on all vessels coming from North America or Newfoundland ports. (B. C. App., 792. 1886.)

(2.) Customs regulations.

United States, 1866, cap. 201, sec. 41, compels the master of any foreign vessel to report on arriving in the waters of the United States at the custom-house nearest to the point at which he entered such waters. This Act was in force without modification during the currency of the Treaty of Washington. (B. C. App., 788. 1866.)

Canada. Existing regulations are embodied in the Act of 1906, cap. 48. See especially secs. 13, 14, 16, 96, 98, 99, and 125. (B. C. App., 649. 1906.)

The Act of 1906, cap. 113, secs. 849, 850, 862, relate to harbour dues.

Newfoundland. Existing regulations are embodied in 61 Vict., cap. 13. See especially secs. 18, 22, 96, 97, 98, 99, 109, 112. (B. C. App., 733. 1898.)

The exemption conferred by sec. 109 upon fishing and coasting vessels is limited by 7 Edw. VII, cap 28, to fishing vessels. (B. C. App., 759, 1907.)

APPENDIX (E).

Correspondence respecting the Award of the Halifax Fisheries Commission.

No. 1.—*Mr. Evarts to Mr. Welsh.*—(*Communicated to the Marquis of Salisbury by Mr. Welsh, October 10, 1878.*)

DEPARTMENT OF STATE,
WASHINGTON, *September 27, 1878.*

SIR, I am directed by the President to present to the attention of Her Majesty's Government the sentiments of this Government respecting the result of the deliberations of the commission, lately sitting at Halifax, for the determination of the question submitted to it under the articles of the Treaty of Washington relating to the fisheries. It is the purpose of the present communication to put you fully in possession of those sentiments that you may impart them to Lord Salisbury with the same frankness that they are disclosed to yourself.

It is a matter of sincere regret to the President that the actual result of the deliberations of this commission has been such as to require from this Government the course of observation upon the same, which it becomes my duty to submit to the consideration of Her Majesty's Government. For reasons of paramount importance to the interests of the two countries, in their future treatment of the subject of the fisheries, a candid statement of the views of this Government, as to the position in which the action of the commission has placed those interests, is due alike to the British Government and ourselves. Nor are these views expressive only of the sentiments of the executive department of the Government. Upon the papers being laid before Congress for its necessary action, upon the question of making an appropriation from the Treasury to meet what should prove to be the proper obligations of the Government under the treaty, Congress, with great unanimity, concurred with the executive in the opinion that the attention of the British Government should be invited to the subject of the award, as looked upon by this Government, in advance of the final action of the executive in reference to its payment. Accordingly the sum appropriated by Congress to meet the award is, by the "Appropriation Act", "placed under the direction of the President of the United States with which to pay the Government of Her Britannic Majesty the amount awarded by the Fisheries Commission lately assembled at Halifax, in pursuance of the Treaty of Washington, if, after correspondence with the British Government on the subject of the conformity of the award to the requirements of the treaty, and to the terms of the question thereby submitted to the commission, the President shall deem it his duty to make the payment without further communication with Congress."

The occasion for this correspondence with the British Government arises from the great importance of reaching a complete and explicit understanding between the two Governments, as to the conformity of the award made by the commission to the terms of the Treaty of Washington by which its authority and jurisdiction are communicated and defined. If the award in respect to the fisheries had relation only to the sum of the payment involved, considerable as that is, the Government might prefer to waive any discussion which could affect no continuing and permanent interests of the two countries, and would, therefore, comprehend only such considerations as would touch the principles or elements of computation applied by the commission in arriving at a pecuniary amount, the payment of which carried no consequences. It is true, even in such case, the indisputable right of the parties to an arbitration public or private, to examine an award in respect of its covering only the very matter submitted, should not be too readily relinquished from mere repugnance to question, a result which, at least, if undisturbed, serves the good purpose of closing the controversy. If the benevolent method of arbitration between nations is to commend itself as a discreet and practical disposition of international disputes, it must be by a due maintenance of the safety and integrity of the transaction in the essential point of the award, observing the limits of the submission.

But this Government is not at liberty to treat the Fisheries Award as of this limited interest and operation in the relations of the two countries to the important, permanent, and difficult contention on the subject of the fisheries, which for sixty years has, at intervals, pressed itself upon the attention of the two Governments, and disquieted their people. The temporary arrangement of the fisheries by the Treaty of Washington is terminable, at the pleasure of either party, in less than seven years from now. The Fisheries Award, upon such termination of the treaty arrangements, will have exhausted its force as compensation for a supposed equivalent and terminated privilege. If the Government, by silent payment of the award, should seem to have recognised the principles upon which it proceeds, as they may then be assumed or asserted by Her Majesty's Government, it will at once have prejudiced its own rights, when it shall become necessary to insist upon them, and seem to have concealed or dissembled its objections to the award when Great Britain was entitled to an immediate and open avowal of them.

Upon these considerations the President and Congress have required that the sentiments of this Government respecting the Fisheries Award should be set before Her Majesty's Government, to the end that a full interchange of views, in a friendly spirit, between the two Governments, should leave no uncertainty as to the degree of concurrence or of difference in their respective estimates of this transaction.

It is greatly to be regretted that the protocols of the commission make no record of the steps by which the majority reached the conclusion which they announced as the award of the commission, and the dissenting Commissioner, on the other hand, arrived at so widely different a result. Had the record disclosed the methods of reasoning on the processes of calculation respecting either of the privileges

which, under the submission of the treaty, were to be measured and compared, upon which these divergent results of their deliberations were reached, the task of exposing the manner and extent in which, in the opinion of the Government, the award transcends, the submission of the treaty would be much simpler. Indeed, in the view which this Government takes of the narrow and well-defined question submitted to the commission by the treaty, and of the indisputable result of the evidence pertinent thereto, there seems little reason to doubt that if the protocols exhibited a trace even, of the elements of computation by which the two concurring Commissioners made up their judgment, they would inevitably disclose the infirmity of the actual award, and make any careful demonstration of the same superfluous.

I desire that you will first call Lord Salisbury's attention to the nature of the question submitted to the Halifax Commission as adjusted through the diplomatic conferences of the Joint High Commission, and expressed in the treaty.

In the first place, the United States, in the fishery articles of the Treaty of Washington, did not intend to, and did not, waive or curtail in the least, the construction of the fishery and appurtenant privileges accorded in the 1st article of the convention of 1818, as claimed by them and actually possessed and enjoyed by them under such claim, at and before the negotiation of the Treaty of Washington. Neither the protocols of the conferences of the Joint High Commissioners, nor the text of the Treaty negotiated by them, indicate any intention of submitting to the interpretation of the Halifax Commission the degree of privilege accorded to the United States by the convention of 1818. On the other hand, it is manifest from the instructions to Her Majesty's High Commissioners, as well as from the protocols of the conferences, that a settlement of the disputed interpretation of the Convention of 1818 was contemplated as possible only by the diplomatic deliberations of the Joint High Commission, and such conclusions thereon as they might find it in their power to embody in the Treaty of Washington. This task, however, they did not undertake, but provided only for a temporary possessory privilege that should supersede, during its continuance, any determination of such disputed interpretation. In this disposition of the

subject it would seem quite beyond the scope of the jurisdiction of the Halifax Commission to include, in any measure of the additional privilege accorded to the United States by article 18 of the Treaty of Washington, any contribution for the enjoyment of the privileges accorded to the United States by the convention of 1818, as claimed and actually possessed by them at the time of the negotiation of the Treaty of Washington. A reference to document No. 15, filed with the Halifax Commission in support of the Case of Her Britannic Majesty's Government, and found at p. 238 of the congressional publication of the proceedings of the Halifax Commission, will substantiate this proposition.

I do not regard this point of serious importance in the exposition of the subject, except that I desire to preclude, in behalf of the United States, any implication or argument hereafter to be drawn from my passing over without criticism this possible element in the admeasurement of the award. The United States still maintains its interpretation of the privilege secured by the convention of 1818,

and protests against any implication from the magnitude of the award of the Halifax Commission, or otherwise from its proceedings under the Treaty of Washington, that the United States have sanctioned or acquiesced in, or by payment of that award would sanction or acquiesce in, any lesser measure of the privileges secured to the United States under the convention of 1818 than, as is well known to Her Majesty's Government, they have always insisted upon.

In the next place, the United States did not submit to the Halifax Commission, under the fishery articles of the Treaty of Washington, any valuation of any general economic or political advantages which grow out of access to fishing grounds for the development of a mercantile or naval marine, and which therefore, it might be argued, would be enhanced by adding the area of the inshore fisheries of the Gulf of St. Lawrence to the fields for that enterprise, from the earliest period open to and occupied by the bold and hardy seamen of this country. Still less did the United States submit to that commission a pecuniary measurement of the removal of occasions of strife between the fishermen, or misunderstanding between the Governments of the two countries, by the temporary obliteration of a restrictive line dividing the inshore from the deep-sea fisheries on portions of the coast of British North America.

Both of these subjects are considerations, governmental in their nature, suitable to be entertained, with many others, in the diplomatic negotiations which ended in the treaty. They are neither of them computable in money. That which relates to the maintenance of good understanding and good neighbourhood between the United States and the British North American provinces can, least of all things, be admitted as an estimable element in a pecuniary computation. The importance of such maintenance of good understanding and good neighbourhood the United States will never under-value. In this interest large fiscal concessions were made by the United States in the adjustments of the Treaty of Washington. After such concessions the superadded submission to the Halifax Commission of the question of equalising, by a pecuniary measure, those concessions with supposed equivalent concessions by Her Majesty's Government was entertained and agreed to by the United States, mainly, if not entirely, in the disposition to meet any just interest of the British North American provinces to be assured of the equality of these intended equivalents. But the maintenance of these good relations is of common interest to the two countries, and can never be made the occasion of pecuniary tribute, as if of more importance to one than to the other. No such calculation entered into the enlightened and conciliatory motives which animated and shaped the important series of negotiations which produced the Treaty of Washington. In the definition of whatever unadjusted computation was referred for pecuniary settlement to the Halifax Commission care was taken to include nothing which, suitably to the honour of both countries, was not measurable by a scale of industrial and commercial profits.

If these plain considerations shall be viewed in this light by Her Majesty's Government, it is hoped that a concurrence of opinion as to the nature of the question actually submitted to a pecuniary measure by the Halifax Commission may be easily reached.

It cannot be very material to recall Lord Salisbury's attention to the historical attitude of the two Governments towards the subject in connection as to the fisheries by any present exposition of the matter. The sources of knowledge on this subject are common to the public cognisance of the two Governments. Our diplomatic intercourse has unfolded the views of successive British and American Cabinets upon the conflicting claims of mere right on the one side and the other, and at the same time evinced on both sides an amicable preference for practical and peaceful enjoyment of the fisheries compatibly with a common interest, rather than a sacrifice of such common interest to a purpose of insisting upon extreme right, at a loss on both sides of what was to each the advantage sought by the contention. In this disposition the two countries have inclined more and more to retire from irreconcilable disputations as to the true intent covered by the somewhat careless, and certainly incomplete, text of the convention of 1818, and to look at the true elements of profits and prosperity in the fisheries themselves, which alone, to the one side or the other, made the shares of their respective participation therein worthy of dispute. This sensible and friendly view of the matter in dispute was greatly assisted by the experience of the provincial populations of a period of common enjoyment of the fisheries without attention to any sea-line of demarcation, but with a certain distribution of industrial and economical advantages in the prosecution and the product of this common enjoyment. The form of this experience was two-fold. First, for a period of twelve years under the reciprocity arrangement of trade between the United States and those provinces; and, second, for a briefer period after the termination of the Reciprocity Treaty, under a system of licenses, which obliterated the sea-line of circumscription to our fishery fleet upon the payment of fees deemed adequate by the provincial Governments.

In this disposition and with this experience the negotiations of the Treaty of Washington were taken up, and produced the fishery articles of that comprehensive treaty. The results of 1381 this experience and the influence of this disposition are plainly marked in the pertinent protocol and in the text of the articles.

At the outset it was apparent that neither a confirmation or rectification of the old sea-line of exclusion or the adoption of a new one had any place in the counsels or purposes of Her Majesty's Government, or in the interests or objects of Her Majesty's provincial subjects. It had become thoroughly understood that the line of the convention of 1818 had become inapplicable, and in some respects insufferable to the common interests.

The mackerel, which, always an inshore as well as a deep-sea fish, off our coasts, at the date of the convention of 1818 and for twenty years after, as an object of pursuit to our fishermen, was confined to the coast of the United States, and that fishery was substantially unknown in any commercial sense in the provincial waters. Either a change of habits in the fish or an extension of the enterprise of our fishermen had opened up the mackerel fishery of the Gulf of St. Lawrence to our pursuit. The gradual increase of the fishing coast population of the provinces had supplied the fishermen, and excited the local interests for the prosecution from the shore, as the base of its operations, of the new industry of inshore mackerel fishery.

Upon the concurrence of these circumstantial changes it was natural enough for the coast population and the public men of the provinces to conclude that the territorial authority which, under the convention of 1818, gave the provinces the monopoly of the inshore mackerel fishery, only needed to be insisted upon by a vigorous exclusion of our fishermen to be fruitful of great local prosperity.

These calculations were disappointed. It was soon found that the provinces themselves were comparatively valueless as a market for mackerel, and that the quality of the fish, as respects the methods of its preparation for export, excluded it from the general foreign market which was open to the products of the cod fisheries. The near market of the United States was essential to the local prosperity of the inshore mackerel fishermen of the provinces. The political control of that market by the United States quite overreached the provincial control of the inshore fishing grounds. Fish that cannot find a market will not long be pursued for gain, and the fishing-coast population and the statesmen of the provinces alike saw that a participation in the mackerel market of the United States was the indispensable condition of prosperity to their inshore fishery. Experience confirmed the logic of this reasoning. While the Reciprocity Treaty endured, settlements thrived and wealth increased. When it was withdrawn, population shrunk and wealth declined; and but for the hope of its renewal a destruction of this industry seemed imminent.

Upon the other hand, the mackerel fishermen of the United States felt that a participation in the inshore fisheries of the Gulf of St. Lawrence was no equivalent for a surrender of our mackerel market to the participation of the inshore fishermen of the provinces. They justly reasoned that this arrangement, in respect of the mackerel catch within the line, instead of placing the provincial fishing industry upon an equal footing with ours, really put us at quite a disadvantage. Ordinarily, home products have a certain measure of advantage over duty-free competing imports in freight, ocean or inland—insurance, and interest, and factorage. But here, what passes for our home product is acquired upon the very shore of our foreign competitor. Its pursuit is at the expense of an extended voyage, with costly outfit and large investment, at great risk, with long delay, measured by heavy insurance and accruing interest. Bringing it to what is called the home market involves return voyage and the attendant burdens of expense. The farmer fishermen of the provincial coasts leave the plough in the furrow and the hay-cart in the field, and take to the simple implements and open boats, with which fishing from the shore is prosecuted, when the mackerel show themselves. They cure their catch as a part of their home labour, and ship it at low rates to our market by bottoms which make a returning commercial freight. At these odds, the share of the inshore mackerel fishery of the Gulf of St. Lawrence seemed to our fishermen but a poor addition to their former extensive rights to be purchased by so great a disadvantage in their general fishing industry, on our own coasts and in the deep sea, as well as inshore fisheries of the provincial waters.

These views, too, were confirmed by our experience during the Reciprocity arrangement, and after its close. Both periods unmistakeably marked the policy of an open market for the products of the provincial fisheries as disastrous to our fishing industry.

With these opinions and these experiences, on the one side and on the other, the High Commissioners undertook an adjustment of the opposing interests upon the principle of obliterating the sea-line between the fishermen of the two countries, and finding such compensation for this concession as might seem equal and just.

In the conferences of the Joint High Commission, it is very apparent that our High Commissioners regarded the obliteration of the sea-line as of no great pecuniary value to our fishing industry. Accordingly, they offered but 1,000,000 dollars for this concession in perpetuity. No doubt politically, and in the interest of good neighbourhood, this Government did regard, and at all times would regard, the restoration of the relations between the two countries in the common enjoyment of these fisheries, to the ancient footing of the treaty of 1783, as most grateful in sentiment and as a most valuable guarantee against any renewal of strife. These considerations, for reasons already stated, could not be worthily entertained upon either side as an element of the pecuniary measure of the privileges to be accorded.

In these conferences it is not less apparent that Her Majesty's High Commissioners recognised the possession of our market for the product of the provincial fisheries as the one thing essential to the prosperity of those fisheries, which could not be dispensed with or replaced by any money purchase. This commercial advantage was, of course, both practically and suitably to the dignity of the negotiation measurable in money. It seemed to our High Commissioners to exceed in value to the provinces, as it unquestionably did in 1382 loss to us, any reasonable estimate of the value of the privilege our fishermen were to acquire. This basis, however, of freedom of the fishing grounds to our fishermen, and freedom of our market to the fishermen of the provinces, in simplicity and national equivalency, presented advantages which might well have dispensed with any nice calculation of comparative pecuniary values in the exchange.

Her Majesty's High Commissioners, however, thought that this exchange of privileges, even with the added concession on our part, of throwing open to the provincial fishermen unrestricted participation in the valuable inshore fisheries of our own coasts above the thirty-ninth parallel, left still a claim for a pecuniary make-weight in favour of the provinces in the nature of owelty of partition. This led to the constitution of the Halifax Commission to consider and decide the single question whether, and how much, the pecuniary measure of the new fishing privilege opened to the United States fishermen exceeded the pecuniary measure of the new fishing privilege opened to the provincial fishermen, and of the possession of our market, free of duty, for all the products of the provincial fisheries. This difference between the two pecuniary valuations was in the nature of the problem no less than by the terms of the treaty to be expressed and paid in money.

Upon the conclusion of the labours of the Halifax Commission, and the communication of the concurring judgment of the two Commissioners, awarding the sum of 5,500,000 dollars as the amount to be paid by the United States under the fishery articles of the treaty, and the judgment of the dissenting Commissioner that no sum whatever was payable by the United States under those articles, it became

the duty of this Government to compare this result with the authority imparted to the commission by the treaty, and to determine whether it comported with, or transcended, such authority.

It will not, I think, be questioned by Her Majesty's Government that, upon the proofs and arguments, in whatever form submitted by the two Governments to the commission, the practical measure of the concession to the United States under article 18 of the treaty was simply of a free and equal right to take part in the fisheries of the Gulf of St. Lawrence within the 3-miles line, instead of being excluded therefrom, as we were under the convention of 1818. Nor do I anticipate that you will find dissent on the part of Lord Salisbury from the proposition, that the proofs fully show that the fishery thus opened to us was the mackerel fishery within that line. While both Governments must regret that the sure footing for a concurrence of views between them, which might have been furnished by a careful system of protocols of the conferences of the commission, is wanting, yet the proofs on both sides leave this proposition in no doubt. Indeed, since the publication by Parliament of the "Correspondence respecting the Halifax Fisheries Commission" has disclosed the advices given from time to time to Her Majesty's Government by Mr. Ford, the very intelligent and circumspect British agent in attendance upon the commission, of the developments of the real subject for valuation, there seems to be no room for any difference of views between the two Governments on this point. Thus, in his despatch of September 10th, 1877, presenting the position upon the completion of the British evidence, and before the opening of the proofs on the part of the United States, Mr. Ford says, "the mackerel fishery being that most extensively pursued by the Americans in British waters, is the branch of the inquiry to which the greatest attention was devoted." In giving, too, in the same despatch, the general result of any pecuniary measure of benefit to the United States fishermen from the concession of article 18 of the treaty, which the completed British proofs had presented as a basis for an award, Mr. Ford makes it very apparent that the mackerel catch within the 3-mile line was the only item of appreciable importance. He says, "according to the evidence adduced on the British side it seems beyond doubt that at least three-quarters of the mackerel taken on the British North American coast is caught within the 3-mile limit, while, owing probably to the existence of sandy shoals at some distance from the shore, the catch of this fish in the United States waters, north of the 39th parallel of north latitude, is principally beyond that distance." Mr. Ford, also, upon the mere British proofs, no less distinctly excludes the cod fishery as an element of the computation of the value to us of the concession of article 18. He says, "the cod fishery is pursued to a limited extent only by United States fishermen within British territorial waters, and this is probably the case with regard to hake, haddock, pollock, &c;" and, again, "the evidence is somewhat vague as to the proportion of cod-fish taken by Americans in British inshores, and it does not probably amount to anything considerable, except on certain portions of the north shore of the Gulf of St. Lawrence."

Mr. Ford's despatch, upon a survey of the counterproofs of the United States, which had just been completed, under the date of the 30th October, 1877, presents the contention between the parties,

and as recognised by both sides, in the same light. He says, "seventy-eight witnesses, in all, have been examined, and 280 affidavits filed on the United States' side; and, as was the case on the British side, the main part of it has been directed to the mackerel fishery, with regard to which the United States' counsel have sought to establish the following salient points:—

"1. That the fishing grounds principally resorted to by the United States' fishermen in the Gulf of St. Lawrence are on the banks situated outside the 3-mile limit, and at the Magdalene Islands, to which they had access previous to the conclusion of the Treaty of Washington.

"2. That the fishing business is at the best an unprofitable one, as regards its net results to the owners or charterers of vessels. A mass of statistics has been put in evidence with a view to prove this assertion, and to show that the Canadian inshore fisheries can hardly be pursued by the United States' citizens except at a loss; while those on their own shore yield a greater prospect of remunerative results.

"3. That the remission of duties on Canadian fish is a great benefit to the producer, inasmuch as the chief market for mackerel is the United States."

1383 In the same despatch Mr. Ford, in certain observations of his own upon the countervailing force of the proofs of the United States, as a whole, against the British proofs as a whole, shows that the valuation of the inshore mackerel fishery of the Gulf of St. Lawrence, opened to our fishermen, was the whole matter of contention before the commission in respect of the concession of article 18 of the treaty. He remarks, "I may, however, observe that, as it has never been denied, even by the British side, that a certain portion of the mackerel taken by the United States in the Gulf of St. Lawrence is caught outside the 3-mile limit, there could be no difficulty in producing a considerable number of fishermen who would truthfully depose that the majority of their successful trips had been made outside the limit of British territorial jurisdiction. The main fact, however, remains practically intact, viz., that without access to the inshores it would be impossible for the general business of mackerel fishing by United States' vessels in the Gulf of St. Lawrence, to be pursued with profitable results."

It seems to this Government quite certain, then, that upon a correct exposition of the submission of the treaty, and the concurring action of the two Governments in the production and application of what they deemed appropriate proofs, what the pecuniary value of our participation in the inshore mackerel fishery of the Gulf of St. Lawrence was fairly estimated at, constituted the extreme limit of any possible pecuniary award by the Halifax Commission against the United States. If, upon any rational view of the criteria of this value before the commission, the award of the two concurring Commissioners, of 5,500,000 dollars as a twelve years' purchase of the privilege can be maintained, it may be fairly conceded that the imputation of invalidity to the award for transcending the submission of the treaty will fail of adequate demonstration. If, on the other hand, the candid exploration of the evidence shall show that there exists no rational proportion between this award and the unquestionable limits of value which any view of the testimony must assign to the subject submitted for valuation by the treaty, as correctly interpreted, then by the very statement of the proposition it is demonstrated that the concurring Commissioners have passed their judgment of valuation upon some other subject than that defined

in article 18 of the treaty, and have transcended the submission to their decision. In such case the antecedent authority imparted to the commission by the two Governments fails to justify the award, and the subject of the fisheries remains at the arbitrament of the two Governments, unconstrained though perhaps enlightened by the deliberations of the Halifax Commission.

In proceeding to apply the proposed test of conformity or non-conformity between the award and the submission, I disclaim all right to trench upon the range of discretion, or to dispute the entire freedom in comparing, weighing, and extracting the true results from evidence which belongs to such special tribunals as the Halifax Commission. I shall not seek in the least to impose any views of my Government upon the evidence in the place of any that may be assumed even to have been taken by the concurring Commissioners. I do, however, insist that upon any question of fact within the submission, the record of the evidence cannot be surpassed by spontaneous conjectures or imaginations of the Commissioners. I have no difficulty in saying that the error of the concurring Commissioners, if error they have fallen into, does not seem to me of this nature. That error is not of mistaking the evidence adduced upon the subject submitted to them, but of mistaking the subject submitted to them, and thus liberating their judgments from obedience to the evidence as thus adduced.

Fortunately, there are trustworthy criteria for determining the value of the concession of article 18, as I have defined that concession to be. They are resorted to upon one side and the other, and, confessedly, furnish the material, upon which the appraisement, if confined to the subject as truly defined, must turn. If, then, upon the evidence, if found conflicting or divergent the largest measures of valuation deducible therefrom be given in favour of the concession of article 18, and that extreme value shall show no rational or approximate relation to the sum awarded, there would seem to be no escape from the conclusion that the concurring Commissioners accepted some other subject for their appraisement than that submitted to them.

It happened that, before the Halifax Commission had concluded its labours, five fishing seasons of the treaty period had already elapsed, and the actual experience of the enjoyment by the United States' fishermen of the privilege conceded, replaced any conjectural estimate of its value by reliable statistics of its pecuniary results. These statistics disclosed that the whole mackerel catch of the United States for these five seasons in the Gulf of St. Lawrence, both within and without the 3-mile line, was 167,945 barrels. The provincial estimates claimed that three-quarters of this catch was within the 3-mile line, and so to be credited to the privilege conceded by article 18. The United States' estimates placed the proportion at less than a quarter. Upon the provincial claim of three-quarters, the product to our fishermen of these five years of inshore fishing would be 125,961 barrels. It was established, upon provincial testimony, that the price which mackerel bore in the provinces, cured and packed ready for exportation, was 3 dol. 75 c. per barrel, and this would give as the value, cured and packed, of the United States' inshore catch for five years, the sum of 472,353 dollars. But in this value are included the barrel, the salt, the expense of catching, curing, and pack-

ing, which must be deducted before the profit, which measures the value of the fishery privilege, is reached. Upon the evidence 1 dollar a barrel would be an excessive estimate of net profit, and this would give a profit to our fishermen from the enjoyment for these five seasons of the fishery privilege, conceded under article 18, of but 25,000 dollars a-year, or, for the whole treaty period of twelve years, of 300,000 dollars.

Although there would seem to be no reason for distrusting this commercial and pecuniary measure of the privilege in question, yet, if it should be pretended that the provincial value should not be taken, but the value in the market of the United States; and, further, that an extravagant rate of 10 dollars per barrel should be assumed 1384 as that value; and, again, beyond all bounds of even capricious estimate, a conjectural profit of 50 per cent. should be assigned to the fishing adventures, we should have but 125,000 dollars a-year, or 1,500,000 dollars for the twelve years of the treaty, for the gross valuation of the concession of the United States by article 18, undiminished by a penny, for the counter-concessions of the United States of articles 19 and 21. Yet this sum, thus reached, is but little more than one-quarter of the award of the concurring Commissioners, after taking into account the deductions required for the privileges of articles 19 and 21.

The proofs disclose another wholly independent criterion of the value of the privilege conceded to our fishermen by article 18 of the treaty, drawn from the experience of some years intervening between the abrogation of the Reciprocity Treaty and the negotiation of the Treaty of Washington. The provincial government in these years adopted a licence system, by which vessels of the United States were admitted to the inshore fishery upon the payment of fees for the season, rated by the ton. The experience of this system showed that under an exaction of 50 cents per ton, our fishing fleet took out licences; that when the fee was raised to 1 dollar per ton, the number of licences fell off about one-half, and when a fee of 2 dollars per ton was exacted, but few licences were taken out. The fairness of this measure of the value of the privilege is obvious. It furnishes a compensatory rate between opposing interests, suggested and acted upon by them without coercion, and by concurring consent.

The tonnage taking out licences under the first and lowest rate was about 32,000 tons. Assuming, contrary to experience, that this tonnage would have borne the highest rate of 2 dollars per ton; the sum of 64,000 dollars per annum would have measured the value of the privilege in question, and would have yielded for the treaty period of twelve years 768,000 dollars. By this method of valuation of the privilege of article 18 (without deducting a penny for the counter-privileges of articles 19 and 21) would be but about 14 per cent. of the award of the concurring Commissioners, after they had taken into account these privileges.

You will say then, to Lord Salisbury, that with every anxiety to find some rational explanation of the enormous disparity between the pecuniary computations of the evidence and the pecuniary measure announced by the concurring Commissioners, this Government has been unable to do so upon any other hypothesis than that the very matter defined in article 18, and to which the proofs on both sides were applied, and the very matter measured by the award of the

concurring Commissioners, were not identical nor even similar, and that such award, upon this reason, transcends the submission.

The demonstration at which I have aimed appears so conclusive upon the mere consideration of the concession of article 18, as to supersede, so far as the immediate argument goes, an exhibition of the reduction even of the moderate sum above assigned, as the true appraisal of the concession of that article, by the pecuniary value, as laid before the commission, of the counter-concessions of articles 19 and 21. But a brief statement of the views of this Government on the treatment of these counter-concessions in the deliberations of the Halifax Commission, is requisite both to the completeness and the frankness of this exposition.

In brief, it may be said that Her Majesty's Government formally insisted in their "Case" and in their "Reply" laid before the commission, that the concession of article 19, whereby British subjects are admitted to the freedom of our coast fisheries north of the 39th parallel, is, to quote the language of the "Case," "absolutely valueless;" and that the concession of article 21, admitting fish and fish-oil, the product of the provincial fisheries, to our markets duty-free, to quote the language of the "Reply," "has not resulted in pecuniary profit to the British fishermen, but, on the contrary, to the American dealer or consumer."

If I have been at all successful in showing the enormous disproportion between the sum of 5,500,000 dollars announced as their award by the concurring Commissioners, and the pecuniary value which the evidence assigns to the concessions of article 18 by itself considered, I need spend little time in showing that these Commissioners must have accepted the views of Her Majesty's Government that nothing was to be allowed for countervailing value to the concessions of articles 19 and 21, or, that these Commissioners had in their minds a measure for the concession of article 18 still more inconsistent with the true treaty definition of the subject described in that article and submitted to the appraisement of the commission.

If the concession of article 19 was held by the Commissioners to be "absolutely worthless," as asserted in the "Case" of Her Majesty's Government, it must have been because the pecuniary profit to the provincial fishermen of the privilege as actually enjoyed by them was the true measure of estimation of the value of the concession. In this view the immense value of these fisheries, as shown in the evidence, all went for nothing, because the population, capital or enterprise in the provinces, could not carry on, what to them were remote fisheries in competition with our own coast population. Without insisting upon the unreasonableness of measuring the value of our fishing grounds by the incompetency of provincial resources to engage in the fishery opened to them, this disposition of the value of the concession of article 19 recognises the whole force and result of the reasoning by which I have assigned the true criteria of value for the privilege of article 18, under the experience of the actual five years' enjoyment thereof by our fishermen, who were able to take advantage of the privilege and did so, to the furthest extent compatible with profit. The view of the reasoning by which a right of fishery, valuable in its own capacity, is measured by the tenants' incapacity to fish, is obvious. It furnishes no true criterion of the rent value of a fishery, which is what needed to be got at both under article 18 and article 19.

Under article 18 we are furnished a true criterion by the experience of a tenant, confessedly willing and able to improve the fishery to the utmost, and actually doing so.

I now desire you to present to Lord Salisbury's attention the subject of the concession of a free market in the United States for the products of the provincial fisheries as made by article 21.

1385 The value of this privilege to the provinces was required by the treaty to be measured by the Halifax Commission, and deducted from their appraisement of the concession of article 18 in favour of the United States.

The statistics of the importation under this privilege showed that at the rate of duty prevalent before that concession, a revenue of about 200,000 dollars per annum on mackerel alone, and of more than 300,000 dollars on all kinds of fish (mackerel included) and fish-oil would have accrued to the United States. For the purpose of argument, conceding that but one-half of this annual sum of 300,000 dollars should be set down as pecuniary profit to the provincial interests, the sum of 1,800,000 dollars would need to be deducted, on the score of article 21, from the true valuation of the privilege conceded by article 18. If I have assigned correctly the highest possible measure of the privilege of article 18, upon the evidence, as not being more than 1,500,000 dollars, this low valuation of the privilege of article 21 more than extinguishes it.

Whatever disposition the concurring Commissioners made of this countervailing concession of article 21—whether they gave it a value commensurate with the statistical evidence of the revenue loss to the United States, and market gain to the provincial interest, or considered it absolutely valueless—the matter is one of much moment.

If these concurring Commissioners gave the sum of 5,500,000 as the appraisement of the concession of article 18, after deducting some 2,000,000 dollars for the countervailing concession of article 21, the argument, as it seems to this Government, adequate before, becomes still more conclusive that the measurement, thus enhanced to some 7,500,000 dollars, was not applied and confined to the very subject submitted to the appraisement of the commission by article 18.

But, it may be said, these concurring Commissioners may have treated the concession of article 21 as absolutely valueless to the provincial interests, and it was competent for them to do so. But this alternative is little consistent with the whole tenour of the views of Her Majesty's Government, as maintained by successive Cabinets, and insisted upon in responsible negotiations, by their most eminent representatives through a long course of years. Certainly, ever since 1851, when Lord Elgin, as Governor-General of Canada, communicated through the British Minister at Washington, Sir Henry Bulwer, to Mr. Webster, Secretary of State, the opinion of the British Government that the admission of the product of the provincial fisheries duty free to our market was the one indispensable condition to our participation in the inshore fisheries of the provinces, down to the negotiation of the Treaty of Washington, the attitude of the British Government on this point has been explicit and unequivocal.

Lord Elgin declared: "Her Majesty's Government are prepared, on certain conditions and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, viz., to throw open to the fishermen of the United States

the fisheries in the waters of the British North-American colonies, with permission to those fishermen to land on the coasts of those colonies for the purpose of drying their nets and curing their fish, provided that in so doing they do not interfere with the owners of private property, or with the operations of British fishermen.

“Her Majesty’s Government would require, as an indispensable condition in return for this concession, that all fish, either fresh or cured, imported into the United States from the British North-American possessions, in vessels of any nation or description, should be admitted into the United States duty free, and upon terms in all respects of equality with fish imported by citizens of the United States.”

The deliberations of the Joint High Commission, as preserved in the protocols of their conferences on the fisheries, exhibit, with perfect distinctness, the British opinion as to a free market for the product of the provincial fisheries being a value to the provincial interests which could not be missed, or replaced by a pecuniary substitute, in any settlement of the question. Thus our High Commissioners stated “that if the value of the inshore fisheries could be ascertained, the United States might prefer to purchase for a sum of money the right to enjoy, in perpetuity, the use of these inshore fisheries in common with British fishermen, and mentioned 1,000,000 dollars as the sum they were prepared to offer.” The British High Commissioners replied “that this offer was, they thought, wholly inadequate, and that no arrangement would be acceptable of which the admission into the United States, free of duty, of fish, the produce of British fisheries, did not form a part.” After a consideration of commercial equivalents, in which the offers of our High Commissioners were not accepted by the British High Commissioners, all such propositions on our part were withdrawn, and our Commissioners renewed their proposal to pay a money equivalent for the use of the inshore fisheries, and further, proposed that, “in case the two Governments should not be able to agree upon the sum to be paid as such equivalent, the matter should be referred to an impartial commission for determination.” To this the British High Commissioners replied, “that it would not be possible for them to come to any arrangement except one for a term of years, and involving the concession of free fish and fish-oil by our High Commissioners; but that, if free fish and fish-oil were conceded, they would enquire of their Government whether they were prepared to assent to a reference to arbitration as to money payment.” Our High Commissioners replied “that they were of opinion that free fish and fish-oil would be more than an equivalent for those fisheries, but that they were also willing to agree to a reference to determine that question, and the amount of any money payment that might be found necessary to complete an equivalent.” Hereupon, as stated in the protocol “the British Commissioners having referred the last proposal to their Government, and received instructions to accept it,” the fishery articles of the treaty were agreed to.

These opinions of Her Majesty’s Government were entirely in accord with the views of the leading provincial statesmen. Mr. Stewart Campbell, of Nova Scotia, declared that “under the reciprocity treaty the total exemption from duty of all fish exported from the maritime provinces to the markets of the United States was also a boon of inestimable value to the very large class
1886 of British subjects directly and indirectly connected with our

fisheries and its resulting trade." Sir John Macdonald said in the Parliament of the Dominion, "the only market for the Canadian No. 1 mackerel in the world is the United States. That is our only market, and we are practically excluded from it by the present duty. The consequence of that duty is that our fishermen are at the mercy of the American fishermen; they are made the hewers of wood and drawers of water for the Americans. They are obliged to sell their fish at the Americans' own price. The American fishermen purchase their fish at a nominal value, and control the American market. The great profits of the trade are handed over to the American fishermen or the American merchants engaged in the trade, and they profit to the loss of our own industry and our own people."

It may be that Her Majesty's Government has surrendered these opinions, and that the statesmen of the Dominion and the people of the provinces now think that the possession of our market for the products of the provincial fisheries is of no pecuniary advantage to these provincial interests. In such case, in any future negotiation respecting the fisheries, this Government would expect no stress to be laid upon the question of the possession of our own markets. If Her Majesty's Government accepts the award of these concurring Commissioners as carrying the necessary consequence that the concession of article 21 is of no value to British or provincial interests that element of calculation will disappear from any possible exchange of equivalents that the exigencies of any future friendly negotiations may need to find at their service. A privilege that is valueless when granted to and enjoyed by a beneficiary may well be reserved and withheld, without the charge of its being ungracious to do so.

If, on the other hand, Her Majesty's Government adheres to the views of the value of our market for the product of the provincial fisheries, so often and so earnestly pressed upon the attention of this Government, and asserts that the award of the concurring Commissioners must be held, upon necessary reasoning, to have measured and deducted this great value of free market from the appraisement of the concession of free fishing to us, made by them under article 18, this Government will expect the more ready acceptance by Her Majesty's Government of the proposition that these concurring Commissioners, in their award, mistook the subject submitted by article 18 to their pecuniary measurement, and exceeded the authority under which the commission acted.

You will, however, very earnestly press upon Lord Salisbury's attention, in advance of any declaration from Her Majesty's Government of their present views of the value of our markets for the products of the provincial fisheries, that this Government has not changed or at all modified its opinions on this subject. To dissemble or conceal from Her Majesty's Government this fact would be uncandid, and, by silence on our part now, breed mischief for future contentions or negotiations. This Government holds now, as it did by the mouth of its High Commissioners in the conferences on the subject of the fisheries which produced the pertinent articles of the treaty, "That free fish and fish-oil would be more than an equivalent for those fisheries." The measure of pecuniary value which I have drawn from the revenue loss to the United States, calculated with extreme moderation, is an inadequate expression of the benefit to the provincial interests and injury to our own from their free im-

portations. It is still the opinion of this Government that the possession of our market is of vital importance to the maritime provinces, and such possession a formidable menace, if not a fatal wound, to our own fishing interests. I do not think that I misunderstand or misrepresent those interests when I say that, standing as we now do, midway in the treaty period, it would be better for those interests to surrender the enjoyment of the fishing privilege of article 18 for the remaining six years of the twelve, upon a resumption by the Government of the control of our own market for this unexpired period.

If Her Majesty's Government and the provincial statesmen are firm in the opinion that the concession of article 18 parts with so much to us, and the concession of article 21 is valueless to British and provincial interests, it may be well worth while for the two Governments to consider whether a mutual resumption of these exchanged interests may not be desirable. In the future, as in the past, this Government will go very far in concessions to remove occasions of strife between the fishermen of the two nations. But these contributions to goodwill, as I have before insisted, are not to be confounded with pecuniary tribute on one side or the other.

It was in this spirit that the free importation of coal, salt, and lumber, which was in debate as a measure of wholly domestic interest to ourselves, but with divided opinions, was proposed to the British Government for reciprocal arrangements in respect of these articles to be incorporated in the Treaty of Washington. The proposal was rejected by the British Government and the provincial interests, doubtless upon a measuring cast as to whether this reciprocity carried more benefit or injury to provincial interests, and what we thought an appreciably greater advantage to the provinces than to ourselves, was rejected as unimportant to them. The contrast between this indifference to a free market for coal, salt, and lumber, and the inexorable demand for a free market for fish and fish-oil, speaks volumes for the pecuniary value of this latter to provincial interests.

Her Majesty's Government, it may reasonably be assumed, has given to this award of the concurring Commissioners its careful attention, and subjected it, in the light of the diplomatic negotiations which established the Halifax Commission, and the evidence before that Commission, to a comparison with the authority imparted by the treaty, to determine whether it conforms to that authority and is valid, or transcends that authority, and, for that reason, is void. Whatever opinion Her Majesty's Government may have formed on this point has not, so far as this Government is aware, been made public at home, and has not been communicated to this Government. In inviting a full exposition of the views of Her Majesty's Government upon the matter, as now brought into consideration
1387 between the two Governments, you will say to Lord Salisbury that, wholly unsupportable as the pecuniary measure of the single and fragmentary matter, not embraced in the diplomatic concurrence of the High Commissioners, and thus left by them to impartial appraisement seems to this Government, it will receive and examine with entire candour any opposing views in maintenance of the validity of the award which Her Majesty's Government may present. If, as I shall not cease to anticipate, Her Majesty's Government shall agree that the subject submitted to the Halifax Commission has not been adequately disposed of by the concurring Commissioners, the

way will seem to this Government to be thereby opened for a more permanent and comprehensive settlement of the fishery interests of the two countries than was reached by the Treaty of Washington. If the present correspondence shall not result in this desired agreement, and even if the opposing views which may be communicated by Her Majesty's Government should affect our present judgment in the very matter of the validity of the award, I cannot, in all candour, hold out any expectation that this Government can ever recognise the valuation of the countervailing concessions of articles 18, 19, and 21, involved in this award as a guide even, much less a standard, for any future treatment of the fishery contentions, which the exigencies of the situation as now left may require.

Passing from the grave question which touches the essential elements of the award, upon considerations vital to the whole system of arbitration, I desire you, further, to call Lord Salisbury's attention to a particular point in the actual award; that is to say, the failure of the three Commissioners to agree in any result, and the consequent announcement of that inability, and the promulgation of the widely different conclusions which the two concurring Commissioners and the dissenting Commissioner had reached.

The question presented on the face of the award of the Halifax Commission, viz., whether the concurrence of the three Commissioners in their award was required by the treaty, was made a matter of public discussion, both in Great Britain and in the provinces, before and during the sitting of the commission. In this discussion, so far as it has fallen under my notice, the legal, political, and popular organs of opinion seemed quite positive that this unanimity was required by the treaty. In this country the matter was little considered, either because the British view of the subject was accepted, or because complete confidence in our case, on its merits, supervaded any interest in the question. The point comes up now, for the first time, for consideration between the two Governments, and will need attention from either, only, in case Her Majesty's Government should fail to concur in the views of this Government which condemn the award on the grave grounds already presented.

The question involves nothing more than the interpretation of the treaty, and is quite clear of any intermixture with the substance of the award as satisfactory or unsatisfactory to either party. It turns, first, upon the mere text of the treaty; and, second, upon the surrounding circumstances and the different subjects to be treated by the various boards of arbitration framed by the Treaty of Washington, so far as they may be rightly resorted to in aid of a just construction of the text.

By the Treaty of Washington four boards are constituted for the determination of certain matters to be submitted to their respective decisions—

1. The Geneva Arbitration was composed of five members, in regard to whose deliberations and conclusions article 2 of the treaty expressly provides that "all questions considered by the tribunal, including the final award, shall be decided by a majority of all the arbitrators."

2. A board of assessors under the Geneva Arbitration, in case the tribunal should not award a gross sum, was to be composed of three members. In the action of this board, article 10 of the treaty declares

that "a majority of the assessors in each case shall be sufficient to a decision."

3. A commission of three members to determine reciprocal claims between the two countries arising during the Civil War. Article 13 provides that "a majority of the Commissioners shall be sufficient for an award in each case."

4. The Halifax Commission, composed of three members, undistinguished, among themselves, by any description of umpirage to either, and with no provision in any form for an award by less than the whole number. The treaty expressly accepts awards, signed by the assenting Arbitrators, or Assessors, or Commissioners under the other articles, while, in the case of the Halifax Commission, this provision takes the place of such acceptance: "The Case on either side shall be closed within a period of six months from the date of the organization of the commission, and the Commissioners shall be requested to give their award as soon as possible thereafter."

The argument from this comparison is obvious. The high contracting parties possessed a common system of jurisprudence, according to which a reference to arbitrators *ex vi termini* required the award to be the act of the arbitrators, that is, of all of them. The parties to an arbitration, public or private, might accord to any lesser number the power of award, but express stipulations in the submission alone could carry that authority. Acting in full view of this rule, to which a desired exception needed to be expressed, in three cases, in the same deliberate and solemn instrument, the high contracting parties imparted the authority to a majority by careful and solicitous provisions to that end. In the case of the Halifax Commission, last in the order of the treaty, and with the previous arrangements, in this regard, in their minds and under their eyes, this power is withheld. It is impossible, because it is plainly irrational, to say that a treaty provision containing power to a majority to bind, and a treaty provision expressing no such authority, mean one and the same thing. The high contracting parties have excluded any such conclusion, by the sedulous discrimination which the text of the treaty discloses.

1388 To the countervailing suggestion that this variation from the system of the treaty in the case of the Halifax Commission is most reasonably accounted for by inadvertence on the part of the High Joint Commissioners, the answer is obvious. If either of the high contracting parties, should so allege, which it certainly would not do without much deliberation, the suggestion would not affect the argument as to the meaning of the treaty as it stood, but would be in the nature of an appeal to the other high contracting party to waive the objection and reform the treaty. No doubt cases may exist where such appeals should be frankly responded to, though against interest.

But you will say to Lord Salisbury that the suggestion of inadvertence in the negotiations, never to be lightly indulged in, overlooks an adequate and presumptively the real reason for the requirement of unanimity in the case of the Fisheries Commission, while it was expressly waived in the other submissions of the treaty.

In the matters of computation submitted in the several other references of the treaty, two circumstances distinguish them from that subjected to the award of the Halifax Commission. First, they were

wholly matters of determinate proof, an appraisement of the ships and cargoes destroyed by the "Alabama" and her consorts, an estimation of damages to persons or property suffered by individual British subjects or American citizens for which reparation should be made—these were matters of definite affirmative proof in pounds or dollars before any award could be asked, and were subject to correction by equally definite opposing proofs before any award could be granted. Second, the assessments carried no measurement of any still subsisting interests between the high contracting parties which would survive the payment of the several awards. It was then quite suitable to these references to accept the judgment of a majority and dispense with the concurrence of both parties, as represented in the commissions, in the results of the contentions before them.

The matter submitted to the Halifax Commission was different in nature, and in the relations of the high contracting parties to the subject of contention. Both these traits of this dispute conspired to urge upon the high contracting parties the need of every possible guaranty against unreasonable or illusory estimates on the part of the commission to the prejudice of one party or the other. Besides, this computation touched a matter in which large classes and interests of either community felt a concern, and it was essential that dissatisfaction with results should be alleviated by confidence in the judgment. So vague a subject of valuation as the twelve years' prospective catch of mackerel within 3 miles of the shore on the coasts of the United States and of the provinces, so diffuse a problem as the distribution of the burdens of duties between producer and consumer, gave too large a range for floating speculations, unless anchored to sober sense by the requirement of unanimity. The permanent importance of these valuations in future negotiations of the two countries, forbade their submission to any commission uncontrolled by the necessary concurrence of the representatives of both countries, in any award. The interests and feeling of the large populations, on the one side and the other, dependent for prosperity, if not for livelihood, on these fisheries, made the two Governments careful to secure them, in any result, against a sense of injustice as well as of disappointment, by the conservative requirement of unanimity.

In submitting to Her Majesty's Government the failure of the Commissioners to come to the agreement which, in this interpretation of the treaty, is requisite to the validity of the award, the Government wishes to lay no undue stress upon this objection. If Her Majesty's Government concurs in this construction of the authority conferred upon the Halifax Commission, this agreement between the Governments will enable them, presently, to make more complete, as well as more satisfactory, arrangements for the reciprocal interests of the industry and commerce of the provinces and of the United States than at present exist. If, on the other hand, Her Majesty's Government shall announce to this Government their construction of the treaty to be that the concurrence of a majority of the Commissioners warrants a valid award, notwithstanding the declared dissent of the third Commissioner, this Government will not refuse to accord to that opinion, thus expressed, all the weight which it desires for its own views. You will therefore say to Lord Salisbury that, upon such a declared disagreement upon the true interpretation of the treaty in respect of unanimity of the Commissioners, this

Government will regard the maintenance of entire good faith and mutual respect in all dealings under the beneficent Treaty of Washington as of paramount concern, and will not assume to press its own interpretation of the treaty, on this point, against the deliberate interpretation of Her Majesty's Government to the contrary.

You will promptly communicate these views to Her Majesty's Government by delivering a copy of this despatch to Lord Salisbury, and requesting an early attention to its contents.

I am, &c.

(Signed)

WM. M. EVARTS.

No. 2.—*The Marquis of Salisbury to Mr. Welsh.*

FOREIGN OFFICE, November 7, 1878.

SIR, Her Majesty's Government have given their attentive consideration to the despatch relating to the proceedings of the Halifax Fisheries Commission, addressed to you by Mr. Evarts, the Secretary of State of the United States, a copy of which you were good enough to place in my hands on the 10th ultimo; and I have now the 1389 honour to make the following observations in reply, which I shall feel greatly obliged by your communicating to Mr. Evarts with the least possible delay:—

Her Majesty's Government fully appreciate the frankness with which Mr. Evarts has requested you to communicate to them the views of the Government of the United States on this question, and it is their desire to reciprocate in the fullest degree the wish expressed by Mr. Evarts to come to a complete and explicit understanding between the two Governments as to the conformity of the award made by the commission to the terms of the Treaty of Washington.

I must, in the first instance, recall to your recollection the circumstances which led to the organisation of the Halifax Commission.

The Reciprocity Treaty of the 5th June, 1854, between Great Britain and the United States, terminated in 1866, not from any desire on the part of Her Majesty's Government to put a period to its stipulations, but in consequence of the notice provided for in article 5 of that treaty having been given by the United States Government. The mutual privileges in respect to free fishing and free trade in certain productions, which had under its operation been enjoyed by the inhabitants of the United States and of Her Majesty's North American Possessions, thus came to an end. The effect of this determination of the Reciprocity Treaty was to revive the difficulties incidental to the Fisheries question; difficulties so well known to both Governments that it is needless for me to enlarge upon them on the present occasion.

The danger, however, of collision between the fishermen of the two nations began to manifest itself soon after the termination of the Reciprocity Treaty; and Her Majesty's Government were anxious to come to a speedy and satisfactory solution of the question. With this view Her Majesty's Minister at Washington addressed, on the 26th January, 1871, a note to Mr. Fish, in which he stated that Her Majesty's Government deemed it of importance to the good relations which they were ever anxious should subsist and be strengthened be-

tween the United States and Great Britain that a friendly and complete understanding should be come to between the two Governments as to the extent of the rights belonging to the citizens of the United States and Her Majesty's subjects respectively with reference to the fisheries on the coasts of Her Majesty's possessions in North America, and as to any other questions between them affecting the relations of the United States towards those possessions.

As the consideration of these matters would, however, involve investigations of a somewhat complicated nature, and as it was very desirable that they should be thoroughly examined, he was directed by Lord Granville to propose to the Government of the United States the appointment of a Joint High Commission which should be composed of members to be named by each Government, should hold its sessions at Washington, and should treat of and discuss the mode of settling the different questions arising out of the fisheries, as well as all those affecting the relations of the United States towards Her Majesty's possessions in North America.

To this note Mr. Fish replied on the 30th January of the same year, and whilst stating that the President shared with Her Majesty's Government the appreciation of the importance of a friendly and complete understanding between the two Governments with reference to the subjects specially suggested for the consideration of the proposed Joint High Commission, he added that it would be desirable to include in the deliberations of that commission a consideration of the other questions then at issue between the two Governments, particularly those known as the "Alabama" claims.

It was, thus, owing to the importance attached by Her Majesty's Government to the fisheries question, and to their anxiety to come to a satisfactory settlement of the difficulties connected with it, that the negotiations were commenced which led to the organisation of the Joint High Commission and ultimately to the Treaty of Washington. A large portion of the deliberations of that commission was devoted to the difficult and long-standing question now under consideration, and after many proposals and counter-proposals, including offers on the part of the United States Commissioners to grant commercial privileges far in excess of the mere remission of duty on fish and fish-oil, in order that they might acquire for United States fishermen unrestricted access to the inshore waters of British North America, articles 18 to 25 and 32 and 33 were at length agreed to, and constitute the authority under which the Halifax Commission acted.

Article 22 provided that—

"Inasmuch as it is asserted by the Government of Her Britannic Majesty that the privileges accorded to the citizens of the United States under article 18 of this treaty are of greater value than those accorded by articles 19 and 21 of this treaty to the subjects of Her Britannic Majesty, and this assertion is not admitted by the Government of the United States, it is further agreed that Commissioners shall be appointed to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in articles 19 and 21 of this treaty, the amount of any compensation which, in their opinion, ought to be paid by the Government of the United States to the Government of Her Britannic Majesty in return for the privileges accorded to the citizens of the United States under article 18 of this treaty; and that any sum of money which the said Commissioners may so award shall be paid by the United States Government, in a gross sum, within twelve months after such award shall have been given."

The Acts necessary to enable the several articles of the treaty relating to the fisheries to be carried into effect were passed by the Imperial Parliament of Great Britain on the 6th August, 1872; by the Parliament of Canada on the 14th June, 1872; by the legislature of Prince Edward Island (which did not at that time form part of the Dominion) on the 29th June, 1872, by the colony of Newfoundland on the 28th March, 1874; and by the United States Congress on the 25th February, 1873. So scrupulous, moreover, were Her Majesty's Government that United States citizens should enjoy in the fullest degree the benefits secured to them under the treaty, that United States fishermen were admitted to the practical use of the inshore fishing grounds in advance of the formal Legislative Acts necessary for that purpose, and this concession was acknowledged by the Government of the United States as a "liberal and friendly act." Her Majesty's Government consider that it is important, in examining this subject, to bear in mind the distinction between that part of the treaty relating to fishery rights in British waters and the part relating to claims then pending on other heads. As regards the fishery rights, the citizens of the United States were, by the treaty, put into actual possession and enjoyment of them. That enjoyment has been had and cannot be recalled. Whether any and what sum was to be paid by the Government of the United States for the rights thus conceded was to be determined, and determined without appeal, by the tribunal constituted under the treaty.

United States fishermen having entered into the enjoyment of the privileges thus secured to them, it became necessary to take immediate steps for the constitution of the commission appointed to meet at Halifax in the manner prescribed by the treaty.

Various circumstances, however, with which your Government are familiar, contributed to occasion delay in the complete organisation of the commission, and it was not, therefore, until the 1st March, 1877, that an identic note was addressed to the Austro-Hungarian Ambassador in London by the Earl of Derby and by the United States Minister in London, requesting that his Excellency would be pleased to name the third Commissioner in the manner provided for by article 23 of the treaty. His Excellency thereupon named M. Maurice Delfosse, the Belgian Minister at Washington, and apprized the Governments of Great Britain, the United States, and Belgium of the selection thus made.

Her Britannic Majesty's Government having previously appointed Sir Alexander T. Galt to be their Commissioner, and Francis Clare Ford, Esq., to be their agent, and the Government of the United States having similarly appointed the Honourable Ensign H. Kellogg to be their Commissioner, and the Honourable Dwight Foster to be their agent, the constitution of the commission was complete in accordance with the terms of the treaty; and after previous communication between the three Commissioners, the 15th June, 1877, was fixed for the first day of meeting.

The commission was accordingly organised by holding the first conference at the city of Halifax on that day, when all the Commissioners were present and produced their respective powers. The Honourable Dwight Foster and Mr. Ford were also present as agents of their respective governments.

M. Delfosse was then, upon the proposal of the United States Commissioner, elected President of the commission, and a secretary having been appointed by him, the three Commissioners proceeded, in accordance with the 23rd article of the treaty, to make and sign a solemn declaration that they would impartially and carefully examine and decide the matters referred to them to the best of their judgment and according to justice and equity.

The commission then, after a meeting on the next day for the purpose of approving and signing the protocol of the previous day's proceedings, adjourned until the 28th day of July, 1877.

The commissioners having met pursuant to adjournment on the 28th day of July, the United States agent named the counsel retained on behalf of the United States, and at the next conference, held on the 30th day of July, the Case of Her Majesty's Government was opened, and was concluded on the 18th day of September; that of the United States of America was opened on the 19th of the same month, and closed on the 24th day of October.

It is unnecessary that I should here recite each step in these lengthened proceedings, it will be sufficient to note that eighty-four witnesses in all were examined on behalf of Her Britannic Majesty's Government and seventy-eight on the part of the United States of America. These witnesses were subjected to the most searching cross-examination by counsel of the greatest ability; and amongst those examined were to be found the names of many persons who, from their special knowledge of the subject, both practically and generally, were well qualified to express an opinion, and whose evidence was entitled to the greatest weight in the investigation of the matter.

Three hundred and nineteen affidavits were produced in support of the Case of Her Britannic Majesty's Government, and 280 in support of that of the United States, the deponents comprising those who were also in a position to give valuable and convincing testimony with regard to the fisheries, but who from various causes were unable to give oral evidence before the commission.

A voluminous mass of documentary and statistical matter was produced and submitted to the commission on either side, and about fourteen entire days were devoted to the arguments of counsel upon the whole Case.

The commission held in all seventy-eight sittings, of about four hours' duration each, and the proceedings terminated on the 23rd day of November, 1877, by the announcement of the following award:—

"The undersigned Commissioners, appointed under articles 22 and 23 of the Treaty of Washington of the 8th May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in articles 19 and 21 of said treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under article 18 of the said treaty:

"Having carefully and impartially examined the matters referred to them according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the 15th day of June, 1877;

"Award the sum of 5,500,000 dollars, in gold, to be paid by the Government of the United States to the Government of Her Britannic Majesty, in accordance with the provisions of the said treaty.

"Signed at Halifax, this 23rd day of November, 1877.

(Signed)

"MAURICE DELFOSSE.
"A. T. GALT."

"The United States Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by the said treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

"And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the Board to make an award under the treaty, except with the unanimous consent of its members.

(Signed) "E. H. KELLOGG, *Commissioner.*"

It was thus assuredly not without the most thorough and laborious investigation of the question submitted to their appreciation that a majority of the Commissioners arrived at the decision above quoted; and it must be observed that the whole of the proceedings were held in strict conformity with the terms of the Treaty of Washington, whilst the award was given by a majority of the Commissioners in the very terms contained in article 22 of the treaty.

In the despatch which has been communicated to Her Majesty's Government, Mr. Evarts seeks to invalidate the award, which is the result of this exhaustive investigation, upon the ground that, in estimating the claims of Great Britain, the Commissioners must be assumed to have taken into consideration circumstances which the Treaty of Washington had not referred to them. There is nothing upon the face of the award which gives any countenance to the supposition that the Commissioners travelled beyond the limits assigned to them by the treaty. Mr. Evarts's argument in favour of this contention is entirely deduced from what he considers to be the magnitude of the sum awarded. It is, he contends, so far in excess of what the United States Government believe to be the true solution of the problem submitted by the treaty, that some factor which the treaty has not recognised must necessarily, in his opinion, have been imported into the calculation.

Mr. Evarts proceeds to give in detail the considerations by which, in his judgment, the result arrived at should be tested. He gives his reasons for believing that mackerel is the only fish to whose capture in the waters opened by Great Britain any value should be assigned, and that no account is to be taken of herring, halibut, cod, hake, pollack, or bait fishes. He computes the number of mackerel which the United States fishermen have caught within a 3-mile line from the shore during the years of the treaty period which have expired; and infers from it the number which they are likely to catch within the same area during the interval that remains, and he concludes this branch of his argument by estimating, on various hypotheses, the profit which the United States fisherman is likely to have made from the mackerel which he has probably caught. On the other side, he estimates at a high value the profit which the British fishermen have derived from the opening of the markets of the United States, and concludes that the sum fixed by the award is so much larger than these considerations would have justified that the United States Government can only explain its magnitude on the assumption that the commission has mistaken the question that was referred to it.

That Mr. Evarts's reasoning is powerful it is not necessary for me to say, nor, on the other hand, will he be surprised to hear that Her Majesty's Government still retain the belief that it is capable of refutation. But, in their opinion, they would not be justified in follow-

ing him into the details of his argument. These very matters were examined at great length and with conscientious minuteness by the commission whose award is under discussion. The decision of the majority was given after full hearing of all the considerations that either side was able to advance, and that decision, within the limits of the matter submitted to them, is, under the treaty, without appeal. The argument of Mr. Evarts amounts to a review of their award upon the questions of fact and of pecuniary computation referred to them. He contends that the sum awarded is excessive, and that therefore the award must have been arrived at by some illegitimate process. But to argue against the validity of an award solely on the ground that the conclusion arrived at by the arbitrators on the very point referred to them is erroneous, is in effect the same thing as to dispute the judgment which they have formed upon the evidence.

Her Majesty's Government do not feel that it is their duty to put forward any opinion, adverse or favourable, to the decision which the majority of the Commissioners have passed upon the affidavits and depositions which they had to consider. Her Majesty's Government could not do so without undertaking the same laborious investigation as that which was performed by the commission, a task for which the interval which has been left between October 10, the day on which Mr. Evarts's despatch was delivered to me, and November 23, the day on which the payment awarded is to be made, would certainly not suffice.

But they are precluded from passing in review the judgment of the commission by a far more serious disqualification. They cannot be judges of appeal in this cause, because they have been litigants. As litigants they have expressed the view upon the facts which they felt bound in that capacity to maintain. Their computations have been totally different in method, and result from those which the American counsel sustained, and which, in part, Mr. Evarts reiterates in his despatch. The interpretation which they have given to the data laid before the Tribunal has been in complete antagonism to his. They have been of opinion, and have insisted with all the force of argument that their agents could command, that 15,000,000 dollars was the legitimate compensation which, under the treaty, was their due. The majority of the Commissioners has decided to reduce that claim nearly by two-thirds. Having formally engaged to submit the matter to this arbitration, they do not think that it is open to them to enquire how it was that the commission came to form an opinion upon their claims so widely different from their own. Still less can they admit that either side is entitled to treat this difference as ground for assuming that the arbitrators have imported into their judgment considerations which the treaty did not authorise them to entertain. Her Majesty's Government can only accept now, as on similar occasions they have accepted before, the decision of the Tribunal to which they have solemnly and voluntarily submitted.

At the close of his despatch Mr. Evarts refers to a consideration, which I ought not to pass over without observation, though he does not place it in the first rank among the objections which he raises against the award. He calls attention to the fact that the award of the commission was not unanimous, and that in the Treaty of Washington no stipulation is, in this case, made that the decision of the majority is to be binding.

The opinion that, according to the Treaty of Washington, the Fishery Commission was incapable of pronouncing any decision unless its members were unanimous, is one in which Her Majesty's Government are unable to concur.

It is not difficult to produce from text-books, even of very recent date, authority for the doctrine that in international arbitrations the majority of the arbitrators binds the minority unless the contrary is expressed.

"Halleck's International Law," edited by Sir Sherstone Baker, 1878, says (chapter xiv, section 6) :—

"The following rules, mostly derived from the Civil Law, have been applied to international arbitrations where not otherwise provided in the articles of reference. If there be an uneven number the decision of a majority is conclusive."

Bluntschli (section 493) says :—

"La décision est prise à la majorité des voix."

Calvo (i, p. 791), lays down :—

"A défaut d'obligations nettement tracées dans l'acte de compromis, les arbitres, pour s'acquitter de leur mandat, se guident d'après les règles tracées par le droit civil : ainsi ils doivent procéder conjointement, discuter et délibérer en commun, décider à la majorité."

I am not aware of any authorities who, in respect to international arbitrations, could be quoted in the contrary sense; and it would not be difficult to show, by a reference to cases in the American as well as in the English Courts, that the same rule has always been judicially applied in the case of arbitrations of a public nature.

The language and stipulations of the treaty itself, so far as they are explicit upon the subject, point to a similar conclusion. Mr. Evarts, indeed, argues that the requirement of unanimity was intended, because, while it is not disclaimed in the case of the fishery rights, it is disclaimed in the case of three other arbitrating Tribunals set up by the treaty. It is evident that, at most, this omission would have left the matter in uncertainty. The suggestion that the framers of the treaty meant by their silence to prescribe a mode of proceeding which, before a Tribunal thus constituted, is unexampled, can only be accepted on the hypothesis that they were deliberately preparing an insoluble controversy for those by whom the treaty was to be executed.

It appears to me that if the language employed in the case of the other Tribunals set up by the treaty be examined carefully a more probable solution of the difficulty may be found. The words used in each case are somewhat peculiar, and lend themselves to the supposition that what the draftsman was thinking of when he employed them was not the question whether unanimity should or should not be required, but under what circumstances the Tribunal should be held to be fully constituted for the purpose of giving a decision. It was obvious that in the course of a protracted and manifold enquiry, in which questions would constantly come up for decision, it was a matter of great practical importance to lay down whether for each decision the presence of the whole Tribunal was required, or whether any condition might be prescribed under which, in spite of the absence of any one member from illness or other cause, a valid decision might yet be given.

The difficulty of conducting, on the more rigid rule, a lengthened enquiry, involving frequent decisions, is a matter of ordinary experience. A common mode of escape from it is to fix some number, short of the entire complement, as the quorum or minimum number which must be present to give validity to a decision. The framers of the Washington Treaty adopted an arrangement somewhat different in form, but similar in effect. They laid down that the decisions should be valid so long as they were adopted by a number not less than the majority of the whole body. That this is the meaning of the three passages in which the word majority appears may be gathered both from the expressions themselves and from the connection in which they are found. The following is a portion of the first paragraph of article 13 on the Commission of Civil War Claims:—

“They shall be bound to receive and consider all written documents or statements which may be presented to them by or on behalf of their
1393 respective Governments in support of, or in answer to, any claims; and to hear, if required, one person on each side, on behalf of each Government, as counsel, or agent for such Government, *on each and every separate claim*. A majority of the Commissioners shall be sufficient for an award in each case.”

Here it is evident that the multiplicity of the claims was the matter specially under consideration; and that “the sufficiency of a majority of the commission for an award” was stipulated with a view to the possible delay which the requirement of a full Tribunal in each case might cause. That the majority should be sufficient for an award in the case of one member being absent was a rule which it was necessary to lay down; for where frequent decisions are not required, provisions of the kind are not customary. On the other hand, it is a universal practice that upon public arbitrations thus constituted, in case of difference of opinion, the majority shall prevail. It is, therefore, consistent with sound principles of interpretation, to assume that the phrase was meant to apply to the point on which a provision was necessary, and not to the point on which a provision was superfluous.

The same reasoning is applicable to the case of the Geneva Tribunal, which had to decide on the alleged failure of neutral duty in Great Britain as to seventeen different ships, besides questions arising in respect to damages. The Board of Assessors which was provided in case the Geneva Tribunal had not awarded a gross sum was a Commission of Claims which would have had to adjudicate upon a very large number of individual losses. In these cases, therefore, as in that which has been just adverted to, the Joint High Commission took a natural and a judicious course in providing that a decision should not be invalid by reason of the absence of a member of the Tribunal, so long as a majority concurred in the award.

On the other hand, no such provision was necessary in the case of the Halifax Commission, which, beyond question of procedure, had but one issue before it, and but one decision to pronounce. In this case it was not necessary to lay down, as in the other cases, that “a majority of the Commissioners should be sufficient for an award,” or that “all questions should be decided by a majority of *all* the arbitrators.”

This construction of the treaty appears to Her Majesty's Government more natural and more respectful to the Joint High Commis-

sion than the assumption that, having resolved to leave one particular case to a mode of arbitration which was entirely novel, and wholly unlikely to issue in a decision, they carefully abstained from the use of any words to indicate the unusual resolution they had formed.

It further appears to Her Majesty's Government that a distinct intimation of the true meaning of the Joint High Commission in respect to the Fishery Award is to be found in the composition of the Tribunal which they adopted. This constitution is consistent with the intention that the majority should decide; it is not consistent with the supposed intention that the dissent of one Commissioner should prevent any decision from being pronounced. The XXIIIrd article of the treaty makes the following provision for the constitution of the Tribunal:—

“The Commissioners referred to in the preceding article shall be appointed in the following manner, that is to say:—

“One Commissioner shall be named by Her Britannic Majesty, one by the President of the United States, and a third by Her Britannic Majesty and the President of the United States conjointly; and in case the third Commissioner shall not have been so named within a period of three months from the date when this article shall take effect, then the third Commissioner shall be named by the representatives at London of His Majesty the Emperor of Austria and King of Hungary. In case of the death, absence, or incapacity of any Commissioner, or in the event of any Commissioner omitting or ceasing to act, the vacancy shall be filled in the manner hereinbefore provided for making the original appointment, the period of three months in case of such substitution being calculated from the date of the happening of the vacancy.

“The Commissioners so named shall meet in the City of Halifax, in the Province of Nova Scotia, at the earliest convenient period after they have been respectively named, and shall, before proceeding to any business, make and subscribe a solemn declaration that they will impartially and carefully examine and decide the matters referred to them to the best of their judgment, and according to justice and equity; and such declaration shall be entered on the record of their proceedings.

“Each of the High Contracting Parties shall also name one person to attend the commission as its agent, to represent it generally in all matters connected with the commission.”

This is the ordinary form of arbitration in which each side chooses an arbitrator, and an umpire is chosen by an indifferent party to decide between the two. The appointment of the umpire is of no utility, the precautions for securing his impartiality are unmeaning, if the adverse vote of one of the arbitrators may deprive his decision of all force and effect.

In ordinary phraseology the decision of a body of members means a decision come to by a majority of voices. In the common use and understanding of language, this is the interpretation which suggests itself to every reader, when it is stated that a number of men have expressed an opinion or have arrived at a determination. The requirement of unanimity is the exception, and therefore can only be conveyed by an explicit statement. There are, of course, well-known exceptions, as in the case of trial by jury. But in such cases the constitution of the deciding body is diametrically opposed to that adopted in the case of the Fishery Commission. Instead of a provision that two-thirds shall be named by the parties to the suit, the most elaborate precautions are taken that the whole body shall

1894 be unbiassed. It is obvious that when unanimity is to be required, when any one member of the deciding body is to have the power of nullifying all the proceedings and preventing a decision, such an arrangement will only be endurable on the condition

that each member shall be so chosen as to be as far as possible free from any inclination to exercise that power on one side rather than on the other. If a jury were constituted on the principle that the plaintiff should chose one-third of it and the defendant another third, very few persons would be found to expose themselves to the cost of an action at law. Had it been known five years ago that an award would be prevented by the dissent of one of the members of an arbitration constituted on the same principle, though I do not venture to conjecture what the course of the United States Government would have been, I feel confident that England would have declined to enter upon so unfruitful a litigation.

Her Majesty's Government may appeal to a cogent proof that in accepting this arbitration they did not contemplate that the award was liable to be prevented by the requirement of unanimity. Believing, in agreement with the majority of the commission, that they were heavy losers by the exchange of concessions contained in articles 18, 19, and 21 of the treaty, they nevertheless have for five years allowed those concessions to come into force, trusting to the compensation which the commission would give to them. That they have done so is a sufficient proof that they did not anticipate a construction of the treaty which would make the delivery of award almost impossible. A valuable property has actually passed into the enjoyment of others, and cannot be recalled. The price to be paid for it was to be determined later by a Tribunal agreed upon between the parties. Is it conceivable that they should have deliberately constituted a Tribunal for this purpose, in which a decision could be wholly prevented by the dissent of a member nominated by the party to whom the property has passed?

Reciprocating cordially the courteous and friendly sentiments by which Mr. Evarts's language is inspired, Her Majesty's Government feel confident that the United States Government will not, upon reflection, see in the considerations which have been advanced any sufficient reason for treating as a nullity the decision to which the majority of the commission have arrived.

I have, &c.

(Signed)

SALISBURY.

APPENDIX (F).

*Letter from Mr. Anthony St. Jno. Baker to Lord Castlereagh,
November 28, 1815.*

(No. 37.)

WASHINGTON, November 28, 1815.

MY LORD, I had the honour to receive on the 19th instant by the Messenger Williams, who arrived at New York in the Chesterfield Packet Boat, Earl Bathurst's Dispatches Nos. 7, 8, 9, 10 and their Enclosures, together with the Ratification of the Commercial Convention signed at London on the 5th of last July.

I lost no time in requesting an Interview with the American Secretary of State which took place yesterday, at which in compliance with the Instructions contained in Earl Bathurst's No. 8, I proceeded to point out the necessity which existed under the present circumstances of the world, of restricting the intercourse of all Ships and Vessels, British as well as foreign, with the exception only of those belonging to the East India Company, with the Island of St. Helena, and the impossibility therefore of complying with that part of the third Article of the Commercial Convention lately signed between the two Countries, by which that Island is made one of the ports of refreshment for the vessels of the United States bound to the East Indies or China. I then acquainted Mr. Monroe that I had received the Prince Regent's Ratification of the Commercial Convention, and had been empowered to proceed to the Exchange, but had been commanded in making this notification, at the same time to communicate to the Government of the United States an explicit declaration as to the intentions of His Majesty's Government with respect to the prohibition of all intercourse with the Island of St. Helena, while it should remain the residence of Napoleon Buonaparte. I remarked that the present stage of the transaction, before the Treaty had been sent to the Senate, was peculiarly appropriate for making this communication, and delivered to him a Note, a copy of which is inclosed, notifying my readiness to exchange the Ratification, and transmitting the Declaration which I had been commanded to make, stating that I had kept these papers until the day which he had appointed for the interview, in order that their delivery might be accompanied with the above declaration.

Mr. Monroe received these Notes, and after reading them attentively, observed that they would be laid before the Senate with the Treaty, and that the President would determine whether any previous communication to me respecting them was necessary. He said very little on the subject, and did not appear to consider the alteration to be of very material importance, although to be regretted, as depriving the vessels of the United States of one convenient port of refreshment.

I availed myself of this opportunity to mention, as a topic connected with the Commercial Treaty, the Order in Council equalizing the duties in England on certain goods imported and 1395 exported in British and American Vessels, and pointed out the want of reciprocity which existed in this Country, no corresponding measure having been adopted by the Executive of the United States. Mr. Monroe was disposed at first to assign as a reason for this, that the Order in Council referred to had never been officially communicated either to Mr. Adams or himself, but afterwards added that the Powers which the President possessed on the subject, derived from the Act repealing the discriminating duties, passed at the close of the last Session of Congress, could only be exercised towards another Nation in the event of an equalization on its part of the duties on Tonnage as well as goods, the former of which were not mentioned in the Order in Council. He observed however, that Congress was on the point of assembling, and that as a consequence of the Ratification of the Treaty, the duties both on Tonnage and Goods would be equalized in the two Countries. I endeavoured to impress upon Mr. Monroe the justice of the claim which it might be expected would be made for a remission of the Extra duties levied in the United States on British goods, subsequently to the date on which the Order in Council went into operation in England with respect to American cargoes.

I next proceeded to fulfil the instructions on the subject of the fisheries contained in the Dispatch No. 10, by recapitulating to Mr. Monroe what had passed between us on that point during the summer, recalling to his memory the note which he had addressed to me respecting the conduct of His Majesty's brig *Jaseur*, and my reply, and informing him that the language which I had held had been approved of by His Majesty's Government. In order to make the communication as clear and distinct as possible, I then read to him the two concluding paragraphs of Earl Bathurst's dispatch.

In reply Mr. Monroe made very few remarks, but they tended to show that his opinion respecting the claims of the United States in consequence of the peculiar character attributed by them to the Treaty of 1783, remained unshaken. He expressed a desire of availing himself of the first convenient opportunity to converse further on the topic, but gave me to understand that Mr. Adams had been directed to negotiate in London an arrangement between the two Countries respecting the forces to be maintained on the Lakes, the intercourse on the frontier, and other subjects connected with the North American Provinces, amongst which this claim of the United States might be included.

During this interview after acquainting him with the steps taken by His Majesty's Government towards the execution of the Articles of the Treaty of Ghent relating to boundary, I requested to know whether any similar measures had been adopted by the United States. He informed me that two Commissioners, Mr. Holmes of Massachusetts and General Peter B. Porter of New York, had been already appointed, and that a third would be named in a few days.

I have, &c.

ANTHONY ST. JNO. BAKER.

To the Right Honble. Viscount CASTLEREAGH, K. C.,

&c. &c. &c.

APPENDIX (G).

Answer of Great Britain to the Statement of the United States as to Statutes and Regulations to which objection is taken.

Great Britain submits that the Statement of the United States is not in compliance with the directions of the Tribunal given on the 19th July, 1910.

It gives no exposition of the grounds of objection to the various enactments referred to in the schedules, and, indeed, the statement at the end of paragraph 4 that it is not to be inferred that the United States would refuse to subject American fishermen to such regulations if it were offered an opportunity of having a voice in them, seems to imply that the United States considers the regulations therein referred to as being in themselves reasonable.

It is respectfully submitted that, in the absence of any specific grounds of objection, these regulations must be taken to be reasonable.

Great Britain further submits that all these regulations are in themselves reasonable, and respectfully invites the Tribunal, in the event of its answer to Question 1 being in favour of Great Britain, to embody in the Award a statement to this effect.

In the absence of all specific grounds of complaint, it is impossible for Great Britain to do more than to state generally that all such regulations are reasonable and proper.

Great Britain submits that no ground has been laid for the request put forward in paragraph 3 of the Statement, that some of these provisions should be referred to a commission of expert specialists.

The same considerations apply with regard to the enactments referred to in paragraph 6 of the Statement of the United States.

August 2, 1910.

Memorandum submitted on behalf of the United States, showing the recognised necessity and uniform practice in 1818 of express stipulation in order to exercise authority over Aliens enjoying Treaty Rights of Commerce, Trade, Residence, &c.

TREATIES OF THE UNITED STATES.

(References are to the official publication of the United States, "Treaties and Conventions," edition 1873).

Netherlands, 1782 (p. 610).

Article IX. "It is further agreed and concluded that it shall be wholly free for all merchants, commanders of ships, and other subjects and inhabitants of the contracting parties, in every place subjected to the jurisdiction of the two Powers respectively, to manage themselves their own business; and moreover, as to the use of interpreters or brokers, as also in relation to the loading or unloading of their vessels, and everything which has relation there to, *they shall be, on one side and on the other, considered and treated upon the footing of natural subjects*, or, at least, upon an equality with the most favored nation."

Prussia, 1785 (pp. 707, 708).

Article II. "The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay within the said United States no other or greater duties, charges, or fees whatsoever, than the most favoured nations are or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy; *submitting themselves nevertheless to the laws and usages there established, and to which are submitted the citizens of the United States, and the citizens and subjects of the most favoured nations.*"

Article III. "In like manner the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize; and shall pay in the dominions of his said Majesty, no other or greater duty, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay: and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favored nation does or shall enjoy; *submitting themselves nevertheless to the laws and*

usages there established, and to which are submitted the subjects of His Majesty the King of Prussia, and the subjects and citizens of the most favoured nations."

Prussia, 1799 (p. 716).

Article II. "The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay there no other or greater duties, charges, or fees whatsoever than the most favoured nations are or shall be obliged to pay. They shall also enjoy in navigation and commerce all the rights, privileges, and exemptions which the most favoured nation does or shall enjoy, *submitting themselves, nevertheless, to the established laws and usages to which are submitted the citizens of the United States and the most favoured nations.*"

Article III. "In like manner, the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandize, and shall pay, in the dominions of his said Majesty, no other or greater duties, charges, or fees whatsoever than the most favoured nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favoured nation does or shall enjoy, *submitting themselves, nevertheless, to the established laws and usages to which are submitted the subjects of His Majesty the King of Prussia and the subjects and citizens of the most favoured nations.*"

Great Britain, 1815 (p. 344).

Article I. "There shall be between the territories of the United States of America, and all the territories of His Britannick Majesty in Europe, a reciprocal liberty of commerce. The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and generally, the merchants and traders of each nation, respectively shall enjoy the most complete protection and security for their commerce, *but subject always to the laws and statutes of the two countries, respectively.*"

1397 *Sweden and Norway, 1816 (pp. 809-810).*

Article I. "There shall be between all the territories under the dominion of the United States of America, and of His Majesty the King of Sweden and Norway, a reciprocal liberty of commerce. The inhabitants of either of the two countries shall have liberty, with all security for their persons, vessels, and cargoes, to come freely to all ports, places, and rivers within the territories of the other, into which the vessels of the most favored nations are permitted to enter. They can there remain and reside in any part whatsoever of the said

territories; they can there hire and occupy houses and warehouses for their commerce; and, generally, the merchants and traders of each of the two nations shall enjoy in the other the most complete security and protection for the transaction of their business, *being bound alone to conform to the laws and statutes of the two countries, respectively.*"

Colombia, 1824 (p. 169).

Article III. "The citizens of the United States may frequent all the coasts and countries of the Republic of Colombia, and reside and trade there, in all sorts of produce, manufactures, and merchandise, and shall pay no other or greater duty, charges, or fees whatsoever, than the most favored nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which the most favored nation does or shall enjoy, *submitting themselves, nevertheless, to the laws, decrees, and usages there established, and to which are submitted the subjects and citizens of the most favored nations.*

"In like manner the citizens of the Republic of Colombia may frequent all the coasts and countries of the United States, and reside and trade there, in all sorts of produce, manufacture, and merchandise, and shall pay no other or greater duties, charges, or fees whatsoever than the most favored nation is or shall be obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce, which the most favored nation does or shall enjoy, *submitting themselves, nevertheless, to the laws, decrees, and usages there established, and to which are submitted the subjects and citizens of the most favored nations.*"

Central America, 1825 (pp. 108-109).

Article III. "The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens of each may frequent all the coasts and countries of the other, and reside and trade there, in all kinds of produce, manufactures and merchandise; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce which native citizens do or shall enjoy, *submitting themselves to the laws, decrees, and usages there established to which native citizens are subjected.* But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws."

Denmark, 1826 (p. 206).

Article II. "The contracting parties being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens and subjects of each may frequent all the coasts and countries of the other, (with the exception hereafter provided for in the sixth article,) and reside and trade there in all kinds of produce, manufactures, and merchandise; and they shall enjoy all the rights, privileges, and exemptions, in navigation and commerce,

which native citizens or subjects do or shall enjoy, *submitting themselves to the laws, decrees, and usages, there established, to which native citizens or subjects are subjected.* But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties, respectively, according to their own separate laws."

Sweden and Norway, 1827 (p. 815).

Article I. "The citizens and subjects of each of the two high contracting parties may, with all security for their persons, vessels, and cargoes, freely enter the ports, places, and rivers of the territories of the other, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories; to rent and occupy houses and warehouses for their commerce; and they shall enjoy, generally, the most entire security and protection in their mercantile transactions, *on condition of their submitting to the laws and ordinances of the respective countries.*"

Hanseatic Republics, 1827 (p. 463).

Article VI. "It is likewise agreed that it shall be wholly free for all merchants, commanders of ships, and other citizens of both parties, to manage, themselves, their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandise by wholesale or retail, as with respect to the loading, unloading, and sending off their ships, *submitting themselves to the laws, decrees, and usages there established, to which native citizens are subjected; they being, in all these cases, to be treated as citizens of the Republic in which they reside, or at least to be placed on a footing with the citizens or subjects of the most favored nation.*"

Brazil, 1828 (p. 95).

Article III. "The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree that the citizens and subjects of each may frequent all the coasts and countries of the other, and reside and trade there in all kinds of produce, manufactures, and merchandise; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce, which native citizens or subjects do or shall enjoy, *submitting themselves to the laws, decrees, and usages there established, to which native citizens or subjects are subjected.* But it is understood that this article does not include the coasting trade of either country, the regulation of which is reserved by the parties respectively, according to their own separate laws."

Prussia, 1828 (p. 724).

Article I. "There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty

to enter the ports, places, and rivers of the territories of each party wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, *on condition of their submitting to the laws and ordinances there prevailing.*"

Austria-Hungary, 1829 (p. 31).

Article I (still in force). "There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation. The inhabitants of their respective States shall mutually have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories, in order to attend to their commercial affairs; and they shall enjoy, to that effect, the same security, protection, and privileges as natives of the country wherein they reside, *on condition of their submitting to the laws and ordinances there prevailing.*"

Greece, 1837 (p. 430).

Article I. "The citizens and subjects of each of the two high contracting parties may, with all security to their persons, vessels, and cargoes, freely enter the ports, places, and rivers of the territories of the others, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories; to rent and occupy houses and warehouses for their commerce; and they shall enjoy, generally, the most entire security and protection in their mercantile transactions, *on condition of their submitting to the laws and ordinances of the respective countries.*"

Sardinia, 1838 (p. 755).

Article I. "There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation, the inhabitants of their respective States shall mutually have liberty to enter the ports and commercial places of the territories of each party, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territories in order to attend to their affairs, and they shall enjoy to that effect the same security and protection as the natives of the country wherein they reside, *on condition of their submitting to the laws and ordinances there prevailing.*"

Portugal, 1840 (p. 699).

Article I. "There shall be, between the territories of the high contracting parties, a reciprocal liberty of commerce and navigation. The citizens and subjects of their respective States shall, mutually, have liberty to enter the ports, places, and rivers of the territories of each party, wherever foreign commerce is or shall be permitted. They shall be at liberty to sojourn and reside in all parts of said

territories, in order to attend to their affairs; and they shall enjoy, to that effect, the same security and protection as natives of the country wherein they reside, *on condition of their submitting to the laws and ordinances there prevailing, and particularly to the regulations in force concerning commerce.*"

Hanover, 1840 (p. 446).

Article I. "There shall be between the territories of the high contracting parties a reciprocal liberty of commerce and navigation.

"The inhabitants of their respective States shall mutually have liberty to enter, with or without their ships and cargoes, the ports, places, waters, and rivers of the territories of each party wherever foreign commerce is permitted.

"They shall be permitted to sojourn and reside in all parts whatsoever of said territories, in order to attend to their affairs, and also to hire and occupy houses and warehouses for the purpose of their commerce, *provided they submit to the laws, as well general as special, relative to the right of residing and trading.*

"*Whilst they conform to the laws and regulations in force, they shall be at liberty to manage themselves their own business, in all the territories subject to the jurisdiction of each party, in respect to the consignment and sale of their goods, by wholesale or retail, as with respect to the loading, unloading, and sending off their ships, or to employ such agents and brokers as they may deem proper, they being, in all these cases, to be treated as the citizens or subjects of the country in which they reside, it being nevertheless understood that they shall remain subject to the said laws and regulations also in respect to sales by wholesale or retail.*

"They shall have free access to the tribunals of justice in their litigious affairs on the same terms which are granted by the law and usage of the country to native citizens or subjects, for which purpose they may employ in defense of their rights such advocates, attorneys, and other agents as they may judge proper."

Argentine Confederation, 1853 (p. 26).

Article II (still in force). "There shall be between all the territories of the United States and all the territories of the Argentine Confederation a reciprocal freedom of commerce. The citizens of the two countries, respectively shall have liberty freely and securely to come with their ships and cargoes to all places, ports, and rivers in the territories of either, to which other foreigners, or the ships or cargoes of any other foreign nation or State, are, or may be, permitted to come; to enter into the same, and to remain and reside in any part thereof, respectively; to hire and occupy houses and warehouses, for the purposes of their residence and commerce; to trade in all kinds of produce, manufactures, and merchandise of lawful commerce, and generally to enjoy, in all their business, the most complete protection and security, *subject to the general laws and usages of the two countries respectively.* In like manner, the respective ships of war, and post-office or passenger packets of the two countries, shall have liberty, freely and securely, to come to all harbors, rivers, and places to which other foreign ships of war and

packets are, or may be, permitted to come; to enter into the same, to anchor and remain there and refit, *subject always to the laws and usages of the two countries respectively.*"

Two Sicilies, 1855 (p. 865).

Article IV. "The citizens and subjects of each of the high contracting parties shall have free and undoubted right to travel and reside in the States of the other, *remaining subject only to the precautions of police which are practised towards the citizens or subjects of the most favored nations.*"

Great Britain, 1794 (p. 326).

Article XIII. "His Majesty consents that the vessels belonging to the citizens of the United States of America shall be admitted and hospitably received in all the sea-ports and harbors of the British territories in the East Indies. And that the citizens of the said United States may freely carry on a trade between the said territories and the said United States, in all articles of which the importation or exportation respectively, to or from the said territories, shall not be entirely prohibited. . . . And the citizens of the United States, whenever they arrive in any port or harbor in the said territories, or if they should be permitted, in manner aforesaid, to go to any other place therein, *shall always be subject to the laws, government, and jurisdiction of what nature established in such harbor, port, or place, according as the same may be.* The citizens of the United States may also touch for refreshment at the island of St. Helena, but *subject in all respects to such regulations as the British Government may from time to time establish there.*"

(pp. 326-327.)

Article XIV. "There shall be between all the dominions of His Majesty in Europe and the territories of the United States a reciprocal and perfect liberty of commerce and navigation. The people and inhabitants of the two countries, respectively, shall have liberty freely and securely, and without hindrance and molestation, to come with their ships and cargoes to the lands, countries, cities, ports, places, and rivers within the dominions and territories aforesaid, to enter into the same, to resort there, and to remain and reside there, without any limitation of time. Also to hire and possess houses and warehouses for the purposes of their commerce, and generally the merchants and traders on each side shall enjoy the most complete protection, and security for their commerce; but *subject always as to what respects this article to the laws and statutes of the two countries respectively.*

TREATIES OF GREAT BRITAIN.

(References are to volumes of Hertslet's "Treaties and Conventions relating to Commerce and Navigation.")

Portugal, 1642 (II, p. 2).

Article III. "And that the subjects of each of the most renowned Kings before named, in the Dominions and Territories of the other,

shall not be worse dealt withall than the natural subjects, in their sales and contracts for their merchandizes, as well for price as otherwise; but that the condition of foreigners and natural subjects shall be equal and alike as aforesaid according to the practice of ancient Treaties made between the most renowned Kings of Great Britain and Castile."

Portugal, 1654 (II, p. 9).

Article II. "That there shall be free commerce between the Republic of England and the King of Portugal, and their people, subjects, and inhabitants, as well by land as on the sea, rivers, and fresh waters, in all and singular the countries, lands, dominions, territories, provinces, islands, colonies, cities, towns, villages, ports, and borders, where commerce was heretofore, or is at this time carried on, in such manner that the people, subjects, and inhabitants of either, may, without any safe-conduct or other general or special licence, pass by land and sea, by rivers and fresh waters, to the aforesaid Dominions and Kingdoms, all their cities, towns, harbours, shores, bays, and places, and enter the same with carriages, horses, packs, and vessels, laden, or unladen, there to import, sell, and buy merchandize, and at a reasonable price to procure victuals, and what necessaries they want for their stay and voyage to refit their ships and carriages, whether their own or such as are hired or lent, and with the same liberty to depart from thence with their goods, merchandize, and all other things whatsoever, either to their own or foreign countries, as they think fit, and without any hindrance; *saving, nevertheless, all the laws and statutes of each place."*

Sweden, 1654 (II, p. 312).

Article VI. "In case any of the ships of either Confederate, whether of war or merchants, belonging to the subjects and people of either, be by occasion of tempests, pursuit of pirates and enemies, or any other urgent necessity constrained to put into each others havens, roads, or shores, they shall be received there with all kindness and humanity, and enjoy all friendly protection, and be permitted to refresh themselves and procure, at a reasonable price, all things needful for their sustenance, reparation, or use; neither shall they be hindered from going out of the said ports or roads, at their pleasure, without paying any customs or duties; *provided they do nothing contrary to the laws, ordinances, and customs of the place, which the said ships shall enter into or abide in.*

(pp. 313-314.)

Article X. "The subjects and inhabitants of the Queen and Kingdom of Sweden may safely and freely travel in England, Scotland, and Ireland, and the Dominions thereof, and pass through the same by sea or land, to any other nations, freely to traffic and have commerce with them in all sorts of merchandize, and to import and export the same. And the people of the said Commonwealth shall enjoy the same freedom in the Kingdoms, Dominions, and Territories of the Queen and Kingdom of Sweden. *Provided the laws,*

ordinances, and particular rights of each nation concerning trade and commerce be observed on both sides."

Denmark, 1660 (I, p. 180).

Article VI. "It shall be free for the subjects of both Kings to come with their merchandize, as well by land as by sea, into the Kingdoms, Provinces, Mart-Towns, Ports, and Rivers of the other, and there to converse and trade, paying the usual customs and duties, *saving always the sovereignty and right of either King, in their Kingdoms, Provinces, Principalities, and Territories, respectively.*"

(p. 182).

Article XIV. "It is also agreed, that in case the subjects and inhabitants, of either of the Confederates, with their shipping (either by reason of pirates chasing them, or by stress of weather, or by any other inconvenience) be forced to repair into the rivers, creeks, bays, or ports, of the other Confederate, there to seek harbour, they shall be kindly and courteously used by the magistrate and inhabitants of such place; and it shall be lawful for them to provide themselves at a reasonable price with those things which shall be necessary for the repairing of their ships, and freely to depart again without any hindrance or search, and paying no tolls and customs; provided, they do not carry out of their ship or ships, any goods or packs, nor expose them to sale, nor have or receive on board, persons guilty or suspected of any crime, or prohibited goods, *nor finally do anything repugnant to the laws, statutes or customs of that place and port where they shall arrive.*"

Sweden, 1661 (renewed in 1812), (II, p. 325).

Article IV. "That either of the aforesaid Confederates, their people and subjects may, without any safe-conduct, licence, general or special, freely and securely go and enter by land or sea, in and to the Kingdoms, Countries, Provinces, Lands, Islands, Cities, Villages, Towns, whether walled or unwalled, fortified or otherwise, havens, and whatsoever dominions of the other, and there stay, and from thence return, or pass through; and in the same places, upon just prices, procure and have provision of victuals for their use and sustenance, and be used with all friendly offices. And that either Confederate their people and subjects may trade, and have commerce in all places, where commerce has hitherto been exercised, in what goods and merchandizes they please, and may freely import and export the same, paying the customs which are due, and *conforming themselves to the laws and ordinances of each kingdom, whether the same concerns trade, or any other right;* which presupposed, the people, subjects, and inhabitants of both Confederates shall have and enjoy in each other's Kingdoms, Countries, Lands, and Dominions, as large and ample privileges, relaxations, liberties. and immunities as any other foreigner at present doth, or hereafter shall enjoy there."

(p. 328).

Article X. "The subjects and inhabitants of the King and Kingdom of Great Britain may safely and freely travel in the Kingdoms,

Dominions and Territories of the King of Sweden, and pass through the same, by sea or land, to any other nations, freely to traffic and have commerce with them in all sorts of merchandize, and to 1401 import and export the same. And the subjects of the King of Sweden shall enjoy the same freedom in the Kingdoms, Dominions, and territories of the King of Great Britain; *provided the laws, ordinances, and particular rights of each nation, concerning trade and commerce, be observed on both sides.*"

Spain, 1669 (II, pp. 141-142).

Article IV. "That between the King of Great Britain and the King of Spain, and their respective people, subjects, and inhabitants, as well upon sea, as upon land, and fresh waters, in all and every their Kingdoms, lands, countries, Dominions, confines, Territories, provinces, islands, plantations, cities, villages, towns, ports, rivers, creeks, bays, streights and currents, where hitherto trade and commerce hath been accustomed, there shall be free trade and commerce, in such way and manner, that without safe conduct, and without general or particular license, the people and subjects of each other may freely, as well by land as by sea, and fresh waters, navigate and go into their said countries, Kingdoms, Dominions, and all the cities, ports, currents, bays, districts, and other places thereof; and may enter into any port with their ships laden or empty, carriage or carriages wherein to bring their merchandize, and there buy and sell what and how much they please, and also at just and reasonable rates provide themselves with provisions and other necessary things for their subsistence and voyage; and also may repair their ships and carriages, and from thence again freely depart with their ships, carriages, goods, merchandize and estate, and return to their own countries or to such other places as they shall think fit, without any molestation or impediment, so that they pay the duties and customs which shall be due, and *saving to either side the laws and ordinances of their country.*"

Denmark, 1670 (I, p. 187).

Article V. "It shall be lawful for the Subjects of both Kings, with their commodities and merchandize, both by sea and land, in time of peace, without license or safe-conduct general or special, to come to the Kingdoms, provinces, mart-towns, ports and rivers of each other, and in any place therein to remain and trade, paying usual customs and duties; *reserving nevertheless to either Prince His superiority, and regal jurisdiction in His Kingdoms, Provinces, Principalities and Territories respectively.*"

France, 1786 (I, p. 279).

Article II. "For the future security of commerce and friendship between the subjects of their said Majesties, and to the end that this good correspondence may be preserved from all interruption and disturbance, it is concluded and agreed, that if, at any time, there should arise any misunderstanding, breach of friendship or rupture between the Crowns of their Majesties, which God forbid! (which rupture shall not be deemed to exist until the recalling or sending home of

the respective Ambassadors and Ministers) the subjects of each of the two Parties residing in the Dominions of the other, shall have the privilege of remaining and continuing their trade therein, without any manner of disturbance, *so long as they behave peaceably, and commit no offence against the laws and ordinances*: and in case their conduct should render them suspected, the respective Governments should be obliged to order them to remove, the term of twelve months shall be allowed them for that purpose, in order that they may remove, with their effects and property, whether entrusted to individuals or to the State. *At the same time it is to be understood that this favour is not to be extended to those who shall act contrary to the established laws."*

Portugal, 1810 (II, p. 63).

Article XXXI. "For the future security of commerce and friendship between the subjects of His Britannic Majesty and His Royal Highness the Prince Regent of Portugal and to the end that their mutual good understanding may be preserved from all interruption and disturbance, it is concluded and agreed, that if at any time there should arise any disagreement, breach of friendship, or rupture, between the Crowns of the high Contracting Parties, which God forbid, (which rupture shall not be deemed to exist until the recalling or sending home of the respective Ambassadors and Ministers) the subjects of each of the two Parties, residing in the Dominions of the other, shall have the privilege of remaining, and continuing their trade therein, without any manner of interruption, *so long as they behave peaceably, and commit no offence against the laws and ordinances*; and in case their conduct should render them suspected and the respective Governments should be obliged to order them to remove, the term of twelve months shall be allowed them for that purpose, in order that they may retire with their effects and property, whether entrusted to individuals, or to the State.

"At the same time it is to be understood that this favour is not to be extended to those who shall act in any manner contrary to the established laws."

Netherlands, 1815 (I, p. 371).

Article III. "The subjects of His Majesty the King of the Netherlands, being proprietors in the said Colonies, shall be at perfect liberty to go to the said Colonies, and to return, without being subjected in this respect to any delay or difficulty; or to appoint persons to act for them in the management of the said intercourse, or of their properties in the said Colonies; *subject, however, during their residence there, to the laws and regulations of the same*. They shall also have full liberty to dispose of their property in any manner in which they may think fit: but it is understood, that, in regard to Negroes, they are to be subject to the same restrictions as British subjects."

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France, 1815 (I, p. 271).

Article VIII. . . . "His Britannic Majesty further engages to permit the subjects of his Most Christian Majesty in India, to con-

tinue their residence and commerce so long as they shall conduct themselves peaceably, and shall do nothing contrary to the laws and regulations of the Government.

* * * * *

"At the same time it is to be understood, that *this favor is not to be extended to those who may act contrary to the laws and regulations of the British Government.*"

Two Sicilies, 1816 (II, p. 135).

Article V. "With respect to the personal privileges to be enjoyed by the subjects of His Britannic Majesty in the Kingdom of the Two Sicilies, His Sicilian Majesty promises that they shall have a free and undoubted right to travel and to reside in the Territories and Dominions of His said Majesty; *subject to the same precautions of police which are practiced towards the most favored nations.* They shall be entitled to occupy dwellings and warehouses, and to dispose of their personal property of every kind and description, by sale, gift, exchange, or will, and in any other way whatever, without the smallest loss or hindrance being given them on that head. They shall not be obliged to pay, under any pretence whatever, other taxes or rates than those which are paid, or that hereafter may be paid, by the most favored nation in the Dominions of His said Sicilian Majesty. They shall be exempt from all military service, whether by land or sea; their dwellings, warehouses, and everything belonging or appertaining thereto for objects of commerce or residence, shall be respected. They shall not be subjected to any vexatious search or visits. No arbitrary examination or inspection of their books, papers, or accounts, shall be made under the pretence of the Supreme Authority of the State, but these shall alone be executed by the legal sentence of the competent tribunal. His Sicilian Majesty engages on all these occasions to guarantee to the subjects of His Britannic Majesty who shall reside in his States and Dominions, the preservation of their property and personal security, in the same manner as those are guaranteed to his subjects and to all foreigners belonging to the most favored and most highly privileged nation."

Netherlands, 1824 (in East Indies), (III, p. 285).

Article I. "The High Contracting Parties engage to admit the subjects of each other to trade with their respective possessions in the Eastern Archipelago, and on the continent of India, and in Ceylon, upon the footing of the most favoured nation; their respective subjects *conforming themselves to the local regulations of each settlement.*"

Buenos Ayres, 1825 (III, p. 45).

Article II. "There shall be, between all the territories of His Britannic Majesty in Europe and the territories of The United Provinces of Rio de la Plata, a reciprocal freedom of commerce: The inhabitants of the two countries, respectively, shall have liberty freely and securely to come, with their ships and cargoes, to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are or may be permitted to come, to enter into the same, and to

remain and reside in any part of the said territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce; *subject always to the laws and statutes of the two countries respectively.*"

Colombia, 1825 (III, p. 57).

Article II. "There shall be, between all the territories of His Britannic Majesty in Europe, and the territories of Colombia, a reciprocal freedom of commerce. The subjects and citizens of the two countries, respectively, shall have liberty, freely and securely to come, with their ships and cargoes, to all such places, ports, and rivers, in the territories aforesaid, to which other foreigners are or may be permitted to come, to enter into the same, and to remain and reside in any part of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce; *subject always to the laws and statutes of the two countries respectively.*"

Sweden, 1826 (III, p. 436).

Article VIII. "In respect to the commerce to be carried on in the vessels of Sweden or Norway with the British dominions in the East Indies, or now held by the East India Company in virtue of their Charter, His Britannic Majesty consents to grant the same facilities and privileges, in all respects, to the subjects of His Swedish Majesty, as are or may be enjoyed, under any Treaty or Act of Parliament, by the subjects or citizens of the most favoured nation; *subject to the laws, rules, regulations, and restrictions which are or may be applicable to the ships and subjects of any other foreign country enjoying the like facilities and privileges of trading with the said dominions.*"

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Mexico, 1826 (III, p. 248).

Article II. "There shall be, between all the territories of His Britannic Majesty in Europe and the territories of Mexico, a reciprocal freedom of commerce. The inhabitants of the two countries respectively shall have liberty freely and securely to come, with their ships and cargoes, to all places, ports, and rivers in the territories aforesaid, saving only such particular ports to which other foreigners shall not be permitted to come, to enter into the same, and to remain and reside in any part of the said territories respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation, respectively, shall enjoy the most complete protection and security for their commerce.

"In like manner, the respective ships of war, and post-office packets of the two countries, shall have liberty freely and securely to come to all harbours, rivers and places, saving only such particular ports (if any) to which other foreign ships of war and packets shall not

be permitted to come, to enter into the same, to anchor, and to remain there and refit; *subject always to the laws and statutes of the two countries, respectively.*

“By the right of entering the places, ports and rivers mentioned in this Article, the privilege of carrying on the coasting trade is not understood, in which national vessels only are permitted to engage.”

Austria, 1829 (IV, p. 3).

Article VI. “In respect to the commerce to be carried on in Austrian vessels with the British Dominions in the East Indies, or now held by the East India Company in virtue of their Charter, His Britannic Majesty consents to grant the same facilities and privileges, in all respects, to the subjects of His Imperial and Royal Apostolic Majesty, as are or may be enjoyed, under any Treaty or Act of Parliament, by the subjects or citizens of the most favoured Nation; *subject to the laws, rules, regulations, and restrictions which are or may be applicable to the ships and subjects of any other Foreign Country* enjoying the like facilities and privileges of trading with the said Dominions.”

Frankfort, 1832 (IV, p. 148).

Article I. “There shall be between the United Kingdom of Great Britain and Ireland and the free city of Frankfort and its territories, a reciprocal freedom of commerce.

“The subjects and citizens of the 2 countries respectively, shall have liberty freely and securely to come with their ships and cargoes, or with goods borne by land, or by inland navigation, to all such places, ports, and rivers, in the respective territories aforesaid, to which other foreigners are, or may be, permitted to come, and to enter into the same, and to remain and reside in any port or part of the said territories respectively, and to hire and occupy houses and warehouses for the purposes of their commerce, in such manner as is permitted to merchants of the most favoured nations; and, generally, the merchants and traders of each state shall, within the territories of the other, enjoy the most complete protection and security for their commerce, *subject always to the laws and statutes of the 2 states respectively*; and, generally, each of the said High Contracting Parties agrees to place the other, in all that respects trade, commerce, and navigation, on the footing of the most favoured nation.”

Austria, 1838 (V, pp. 4-5).

Article IX. “In regard to the commerce to be carried on in Austrian vessels with the British Possessions in the East Indies, Her Britannic Majesty consents to grant the same facilities and privileges to the subjects of His Imperial and Royal Apostolic Majesty, as are or may be enjoyed, under any Treaty or Act of Parliament, by the subjects or citizens of the most favoured nations; *subject to the laws, rules, regulations, and restrictions, which are or may become applicable to the vessels and subjects of any other foreign country* enjoying the like advantages and privileges of trading with the said Possessions.”

APPENDIX (I).

Russian-Japanese Convention concerning Fisheries.

(Signed July 15 (28), 1907.)

(Translation.)

HIS Majesty the Emperor of All the Russians and His Majesty the Emperor of Japan have, for the purpose of concluding a fisheries convention in accordance with the provisions of article 11 of the Treaty of Peace concluded at Portsmouth on the 23rd August (5th September), 1905 (being the 5th day of the 9th month of the 38th year of Meidji), appointed as their Plenipotentiaries, to wit:

His Majesty the Emperor of All the Russians: Alexander Iswolsky, Master of his Court and Minister for Foreign Affairs, and his Privy Councillor Constantine Goubastoff, Assistant Minister for Foreign Affairs; and

1404 His Majesty the Emperor of Japan: Itchiro Motono, Doctor of Laws, his Envoy Extraordinary and Minister Plenipotentiary near His Majesty the Emperor of All the Russians;

Who, after having communicated to each other their respective full powers, found in due and good order, have concluded the following articles:—

ARTICLE 1.

The Imperial Government of Russia grants to Japanese subjects, in accordance with the provisions of the present convention, the right to fish, catch, and prepare all kinds of fish and aquatic products, except fur seals and sea otters, along the Russian coasts of the seas of Japan, Okhotsk, and Behring, with the exception of the rivers and inlets. The inlets which constitute the objects of the above exception are enumerated in article 1 of the protocol hereto annexed.

ARTICLE 2.

Japanese subjects are authorised to engage in fishing and in the preparation of fish and aquatic products in the fishing tracts specially designated for this purpose, situated both at sea and on the coasts, and which shall be leased at public auction without any discrimination between Japanese and Russian subjects, either for a long term or for a short term. Japanese subjects shall enjoy in this respect the same rights as Russian subjects who have acquired fishing tracts in the regions specified in article 1 of the present convention.

The dates and places appointed for these auctions, as well as the necessary details relative to the leases of the various fishing tracts, shall be officially notified to the Japanese consul at Vladivostok at least two months before the auctions.

The fishing for whale and cod-fish, as well as for all kinds of fish and aquatic products which cannot be taken within special tracts, shall be permitted to Japanese subjects on sea-going vessels provided with a special permit.

ARTICLE 3.

Japanese subjects who shall have acquired fishing tracts by lease in accordance with the provisions of article 2 of the present convention shall have, within the limits of these tracts, the right to make free use of the coasts which have been granted to them for the purpose of carrying on their fishing industry. They may make on these coasts the necessary repairs to their boats and nets, haul the latter on land and land their fish and aquatic products, and salt, dry, prepare, and store their fish and other hauls there. For these purposes they shall be at liberty to construct thereon buildings, stores, cabins, and drying houses, or to remove them.

ARTICLE 4.

Japanese subjects and Russian subjects who have acquired fishing tracts in the regions specified in article 1 of the present convention shall be treated on an equal footing in everything regarding imposts or taxes, which are or shall be levied on the right to fish and to prepare fishing products, or on the movable or immovable property necessary in this industry.

ARTICLE 5.

The Imperial Russian Government shall not collect any duty on fish and aquatic products, caught or taken in the provinces of the coast and of the Amour, whether such fish and aquatic products are manufactured or not, when they are intended for export to Japan.

ARTICLE 6.

No restriction shall be established regarding the nationality of persons employed by Japanese subjects in fishing or in the preparation of fish and aquatic products in the regions specified in article 1 of the present convention.

ARTICLE 7.

With regard to the mode of preparation of fish and aquatic products, the Imperial Russian Government agrees not to impose on Japanese subjects any special restrictions from which Russian subjects are exempt who have acquired fishing tracts in the regions specified in article 1 of the present convention.

ARTICLE 8.

Japanese subjects who have acquired the right to fish may proceed directly either from Japan to the fishing-grounds, or from these grounds to Japan, on vessels provided with a certificate issued in Japan by the competent Russian consulate, as well as with a bill of health issued by the Japanese authorities.

The said vessels shall be authorised to transport from one fishing-ground to another, without imposts or taxes, the persons and articles necessary in the fishing industry, as well as the fish and other sea products. The aforementioned vessels shall submit in all other respects to the Russian laws on coasting trade at present enforced or which may be enacted in future.

ARTICLE 9.

Japanese and Russian subjects who have acquired fishing tracts in the regions specified in article 1 of the present convention shall be placed in a footing of equality with regard to the laws, regulations, and ordinances at present in force or which may be enacted in future concerning fish culture and the protection of fish and aquatic products, the supervision of the industry connected therewith, and any other matter relating to fisheries.

The Japanese Government shall be notified of newly enacted laws and regulations at least six months before their enforcement.

With regard to newly enacted ordinances, notice shall be given thereof to the Japanese consul at Vladivostok at least two months before they go into effect.

ARTICLE 10.

With regard to matters not specially designated in the present convention, but which relate to the fishing industry in the regions specified in article 1 of the said convention, Japanese subjects shall be treated on the same footing as Russian subjects who have acquired fishing tracts in the aforementioned regions.

ARTICLE 11.

Japanese subjects may engage in the preparation of fish and aquatic products within the tracts of ground which shall be rented to them outside the regions specified in article 1 of the present convention, always submitting to the laws, regulations, and ordinances which are or may be in force and applicable to all foreigners in Russia.

ARTICLE 12.

The Imperial Government of Japan, in consideration of the fishing rights granted by the Imperial Government of Russia to Japanese subjects by virtue of the present convention agrees not to levy any import duties on the fish and aquatic products caught or taken within the provinces of the coast and the Amour, whether these fish and aquatic products are manufactured or not.

ARTICLE 13.

The present convention shall remain in force for twelve years. It shall be renewed or modified at the end of every twelve years, by virtue of a mutual agreement between the two High Contracting Parties.

ARTICLE 14.

The present convention shall be ratified and the ratifications exchanged at Tokyo as soon as possible and at all events not later than four months after its signature.

In witness whereof the respective Plenipotentiaries have signed the present convention and affixed thereto their seals.

Done at St. Petersburg, the 15th (28th) July, 1907, being the 28th day of the 7th month of the 40th year of Meidji.

ISWOLSKY.	[L. S.]
GOUBASTOFF.	[L. S.]
I. MOTONO.	[L. S.]

Protocol.

The Government of His Majesty the Emperor of all the Russians and the Government of His Majesty the Emperor of Japan deeming it necessary to settle certain questions arising from the provisions of the fisheries convention, signed this day, their respective Plenipotentiaries have agreed on the following articles:—

ARTICLE 1.

The inlets comprised within the exception mentioned in article 1 of the fisheries convention signed to-day are the following:—

1. St. Lawrence Bay, as far as a straight line drawn from Cape Pnaugun to Cape Kharguilakh.
2. Metchigeme Bay.
3. Konian (Penkeguni) Bay, as far as a straight line drawn from Cape Netchkonone to Grab Peak.
4. Abolechev (Kalagan) Bay.
5. Roumilet Bay.
6. Providence Bay, as far as a straight line drawn from Cape Lissovsky to Ball's Head.
7. Saint Croix Bay, as far as the parallel of Cape Meetchken.
8. Anadyr Bay, as far as a straight line drawn from Cape Saint Basilius to Cape Guek.
9. Saint Paul Bay.
10. Schliupotchnaïa Gavane.
11. Tuleny Lake.
12. Schestifoutovy Lake.
13. Northern part of the Gulf of Baron Korff.
14. Port Karaga.
- 1406 15. Bétchévinsky Bay.
16. Avatchinsky Bay, as far as a straight line drawn from Cape Bezimianny to Cape Dalny.
17. Penjinsky Gulf, as far as the parallel of Cape Mamet.
18. Grand Duke Constantine Bay.
19. Saint Nicholas Gulf, as far as a straight line drawn from Cape Lamsdorff to Cape Groté.
20. Stchastia Bay.
21. Baikal Gulf, as far as a straight line drawn from Cape Tchaouno to Cape Vitovtov.
22. Nyisky Gulf.
32. Nabilsky Gulf.
24. Krestovy Bay.
25. Stark Bay.

26. Vanine Bay, as far as a straight line drawn from Cape Vessely to Cape Bourny.

27. Imperial Harbor, as far as a straight line drawn from Cape Milioutine to Cape Poutiatine.

28. Terneï Bay, as far as meridian of Cape Strachny.

29. Saint Vladimir Bay, as far as a straight line drawn from Cape Balusek to Cape Vatovsky.

30. Small inlet situated in the north-east portion of Préobrajénie Bay, as far as the meridian of Cape Matveïev.

It is understood that the exception in question shall extend only as far as the boundaries of the Russian territorial waters.

With regard to the northern coasts of the Okhotsk Sea, from the mouth of the Podkaguerny River to Port Ayan, with exception of Penjinsky Gulf (see No. 17 above), the inlets to be comprised within the aforementioned exception shall be determined according to the following definition: Bays which cut into the continent a distance three times as great as the width of their entrance.

Fishing shall, moreover, be prohibited to Japanese subjects as well as other foreigners, for strategical reasons, within the limits of the territorial waters of the following bays:

1. De Castries Bay, together with Frederickse Bay, as far as a straight line drawn from De Castries Bay to Cape Kloster-Kamp and to a line drawn from Cape Kloster-Kamp to Cape Ostry.

2. St. Olga Bay, as far as a straight line drawn from Cape Menevsky to Cape Shtott.

3. Peter the Great Bay, from Cape Povorotony to Cape Gamov, including the islands within this bay.

4. Possiet Bay, from Cape Jamov to Cape Boutakov.

ARTICLE 2.

As far as the limits of the river with regard to the sea are concerned, the two High Contracting Parties will conform to the principles and usages of international law.

ARTICLE 3.

The right of fishing granted to Japanese subjects within the Liman of the Amour, by virtue of the fisheries convention, is subject to the following special conditions:—

1. Japanese subjects may acquire fishing tracts within this region at public auction on the same footing as Russian subjects.

2. Japanese subjects who have acquired fishing tracts shall be subject, in all respects with regard to the fishing industry, to the same laws, regulations, and ordinances, already enacted or to be enacted for river fishing in the basin of the Amour, as Russian subjects who have been awarded fishing tracts themselves, and especially to the provisions which prohibit persons who have been granted fishing tracts in this region from employing foreign laborers.

ARTICLE 4.

Japanese subjects may, at their request, acquire fishing tracts at public auction anywhere within the regions specified in article 1 of

the fisheries convention, provided they submit to the laws, regulations, and ordinances at present in force or which may be enacted in future for the breeding and protection of fish, for the supervision of the industry connected therewith, and on any other matter relating to fisheries in the aforementioned regions. It is understood that the Japanese subjects shall only be subject to these laws, regulations, and ordinances to the extent that the same laws, regulations, and ordinances are applicable to Russian subjects themselves who have acquired fishing tracts in these regions.

ARTICLE 5.

The term "Russian subjects who have acquired fishing tracts" (see articles 2, 4, 7, 9, and 10 of the fisheries convention and article 4 of the present protocol) shall neither apply to colonists nor to native races enjoying special privileges.

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ARTICLE 6.

It is understood that the Imperial Russian Government reserves the right to grant fishing rights to colonists who may come and settle at places where there are no fishing tracts leased. The same shall apply to the native races.

The Russian Government agrees not to grant, during the continuance of the fisheries convention, the said rights to colonists or native races at the places where fishing tracts have already been created once.

It is agreed that the term colonists shall be applied only to persons and their families who are personally engaged in fishing without hiring any workmen.

ARTICLE 7.

The Imperial Russian Government gives the assurance for the future that the fishing tracts already existing in the regions specified in article 1 of the fisheries convention shall remain open throughout the duration of the said convention, with the exception of the tracts at present occupied by the colonists for their fishing.

ARTICLE 8.

The duration of the grants of fishing tracts leased by public auction shall be fixed as follows:—

1. One year for tracts which are opened for the first time after the fisheries convention goes into force.
2. Three years for tracts which have already been worked for one year.
3. Three years for tracts which have already been worked during the first period of three years.
4. Five years for tracts which have already been worked during the two periods of three years.

ARTICLE 9.

Leases of fishing tracts whose term has not yet expired at the time of expiration of the twelve-year period mentioned in article 13

of the fisheries convention shall continue to be valid throughout the duration of the term fixed in the aforementioned leases, whatever decision may be reached by the two Contracting Parties concerning the convention itself.

ARTICLE 10.

The Imperial Russian Government will have no objection to Japanese subjects manufacturing fertilizer from herring and other species of fish which happen to enter their nets with the herrings when they are swimming in masses. The Russian Government will also have no objection to the Japanese subjects preparing and salting pickled fish after the Japanese manner.

ARTICLE 11.

The certificate of navigation for the voyage from Japan to the fisheries in the Russian waters and back shall be issued by the competent Russian consulates to the Japanese fishers upon the presentation of documents showing:—

1. The right to lease the tract (or tracts) to which the vessel wishes to sail.

2. The number of persons on board.

3. The nature of the cargo, which shall be solely intended for the fishing industry, and its quantity.

The navigation certificate shall enumerate:

1. The name of the vessel and of the port where it is registered.

2. The name of the fishing contractor to whom the tract or tracts have been granted.

3. An exact indication of the fishing tract or tracts to which the vessel is proceeding.

4. The nature and quantity of the cargo.

5. The number of persons on board.

The vessel provided with the aforementioned certificate and with the bill of health shall be authorized to enter and call only at the points along the Russian coasts which are indicated in the certificate. It is a matter of course that the ports where a custom-house is situated shall always be accessible to the said vessel.

Japanese vessels proceeding to Russian waters in order to engage in fishing for whales, cod, &c., by virtue of the third paragraph of article 2 of the fisheries convention, shall call provisionally in one of the Russian ports specially designated, where the competent Russian authorities shall issue to them a special permit for such fishing, which permit shall serve them at the same time as the certificate of navigation.

ARTICLE 12.

The use of the ordinary Tateami shall be authorized in all fishing tracts occupied by Japanese subjects except in tracts situated
1408 nearest to the mouths of rivers. It is agreed, moreover, that the use of Tateami in these last-mentioned fishing tracts shall not be prohibited in case fishing with movable nets is not practicable there.

ARTICLE 13.

It is understood that the expression "Fish and aquatic products" used in the fisheries convention and the protocol annexed thereto, shall include all species of fish, animals, plants, and other aquatic products except fur-seals and sea-otters.

ARTICLE 14.

The present protocol shall be considered as being ratified upon the ratification of the fisheries convention signed to-day, and shall have the same duration as the said convention.

In witness whereof the Plenipotentiaries have signed the present protocol and sealed it with their seals.

Done at St. Petersburg, in two copies, on the 15th (28th) July, 1907, being the 28th day of the 7th month of the 40th year of Meidji.

ISWOLSKY.	[L. S.]
GOUBASTOFF.	[L. S.]
I. MOTONO.	[L. S.]

Reciprocal Declarations contained in Protocol No. 4 of the Negotiations on the Fisheries Convention.

1. With regard to the northern coasts of the Sea of Okhotsk, the Imperial Russian Government, without awaiting the final result of the detailed surveys of these coasts, which will be made without delay, agrees to grant fishing tracts to Japanese subjects in all places which are obviously not comprised within the definition agreed on for the term "inlet."

2. With regard to the prohibition to employ foreign workmen in the fishing tracks of the Liman of the Amour, the Plenipotentiary of Russia has given the following explanation to the Plenipotentiary of Japan: In fishing tracts leased for a long term the employment of foreign labourers is prohibited both for fishing and the preparation of fish; however, the owners of these tracts may, at their request, lease tracts of ground for a short term at places situated from one-half to one dersh from their fishing tracks. No restrictions shall be placed on the nationality of the workmen employed in these tracts of ground intended for use in the preparation of the fish.

In the fishing tracts leased for a short term the employment of foreign labourers is prohibited only in the catching of fish, it being permissible to employ labourers of all nationalities without distinction on land in the preparation of the fish.

It is understood as a matter of course that, in the tracts leased for a long term as well as in those for a short term, the aforementioned restrictions regarding nationality shall not apply to persons who are not comprised within the category of labourers, such as foremen, overseers, clerks, &c.

3. It is understood that the expression "short-term leases" applies only to leases whose term does not exceed one year.

4. It is agreed that the fishing tracts situated within the regions specified in article 1 of the fisheries convention, and leased for a long

term before the said convention went into force, shall also be leased for a long term immediately after the convention goes into force.

5. All Japanese steam vessels navigating in Russian waters for the purpose of engaging there in the fishing industry must be provided with a ship's journal translated into Russian or English. As to Japanese sailing vessels navigating in Russian waters for the purpose of engaging in the fishing industry, they shall comply with the foregoing provision as far as possible.

6. The principles laid down in article 11 of the fisheries convention having been established, the Plenipotentiary of Japan expressed the hope that the Imperial Russian Government, in imposing upon Japanese subjects the restrictions which might be connected with the application of this article, will be guided only by considerations of public order, and that it will endeavour to reduce them as much as possible. The Russian Plenipotentiary replied that he shared this view, and that the intention of the Russian Government was to establish the same rules for all foreigners engaged in the industry mentioned in the same article as are now enforced in the Nicolayefsk region (mouth of the Amour and the Liman), but that it reserved the right not to extend these rules to localities where the supervision is difficult.

7. The Plenipotentiary of Japan, taking note of the final acceptance by the Plenipotentiary of Russia of the wording of article 5 whereby the Russian Government agrees not to collect any duty, impost, or tax, under any denomination whatever, on fish or aquatic products caught or taken within the Russian waters of the provinces of the coast and of the Amour, and intended for export to Japan, whether such fish or aquatic products are manufactured or not, declares that his Government, on its part, will not only not collect the import duties mentioned in article 12, but also no duty, impost, or tax, under any denomination whatever, upon fish and aquatic products caught or taken within the Russian waters of the provinces of the coast and of the Amour and imported into Japan, whether such fish and aquatic products have been manufactured or not.

1409 8. In order to avoid all cause of misunderstanding in future regarding certain inlets comprised within the exception mentioned in article 1 of the fisheries convention, the map herewith enclosed and giving the exact limits of the said inlets has been annexed to the present protocols.

GUBASTOFF.
I. MOTONO.

APPENDIX (J).

Memorandum submitted by the United States in reply to Abstract of Statutes, Proclamations, &c., filed by Great Britain.

NEWFOUNDLAND.

BRITISH ABSTRACT OF STATUTES, CORRECTIONS, ADDITIONS, AND PROCLAMATIONS, &c. NOTES.

Before 1783.

Br. App. 689. 1611.

Orders issued by John Guy (Governor), binding "all persons of what nation soever."

"Orders issued by John Guy, Governor of Newfoundland, August 13, 1611."

The preamble states: "Whereas among those persons that use the trade of fishing in these parts, many disorders, abuses and bad customs have crept in . . . for as much as it concerneth not only the *benefit* and *profit* of the trade of fishing, but also the *public behoof* and *good*, if all such grievances should be stopped," the orders are issued.

The orders were police provisions intended to prevent disorder among these engaged in the fishery.

The orders do not in any manner restrict the liberty of taking fish as to hours, days, or seasons, or as to method, means, or implements employed; on the contrary, they clearly protect the *liberty* of fishing from interference, rather than limiting the *exercise* of such liberty.

(1.) No ballast to be thrown out to the prejudice of the harbours.

(2.) No harm to be done to any stages, cook-rooms, flakes, &c.

(3.) Admirals of each harbour to take such beach or flakes as are necessary for his boats with over-plus only for one boat more than he hath, and every other person to content himself with what he shall have necessary use for.

(4.) No person to change marks of boats.

(5.) No person to convert to his own use boats of others except in cases of necessity and on notice to admiral.

(6.) No person to set fire in any woods.

(7.) No person to destroy any stage, &c.

[*These shew regulations as to use of shore in relation to drying and curing fish.*]

Br. App. 511. 1653.

Instructions to John Treworgie (Commissioner for administration of affairs of the Commonwealth in Newfoundland) from the Council.

(1.) Take care for the Government and the fishery according to annexed laws:—

(2.) Collect fish dues from strangers.

(3.) Secure fishery from any disturbance or interruption, power to order vessels to keep together or otherwise dispose of themselves for common safety.

1410 *Annexed laws.*

(1.) No ballast to be thrown out to prejudice of harbours, but to be carried ashore where it does not do any annoyance.

(2.) No person to damage any stage cookroom, &c. To be content with such stages as may be necessary.

(3.) According to ancient custom the first to arrive to be admiral of harbour—same regulations as to reserving beach and flakes as in 1611 order. Those who have occupied several places to notify which they will choose.

(4.) No defacement of marks of boats, and no one to use other person's boats or "train fats"

Orders of this nature were declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt & Beard appended to this Memorandum (p. 16).

"Instructions to John Treworgie Gent, appointed Commissioner for managing and ordering the affairs and interest of the Commonwealth in Newfoundland for this present year. June 3, 1653."

(1) Take care for the Government and well ordering of Newfoundland and the inhabitants, likewise the fishery, according to annexed laws and ordinances.

(3) Secure fishery from any that shall attempt to disturb or interrupt, have power to order vessels to keep together or otherwise disposes of themselves for the common safety, and to consider the manner of fortifying for preservation of both country and fishing.

Annexed laws.

(2) No person whatsoever, either fisherman or inhabitants, &c.

without consent, nor to remove them except in case of necessity and on notice to admiral and others.

(5.) No one to steal any fish, train, salt, &c.

(6.) No one to set fire to woods or to damage trees by rinding except for covering of cookrooms.

(7.) No one to hinder hauling of seines for bait in usual places.

(9.) No Taverns.

(10.) Limits stage room occupied by any planter.

(13.) The company to assemble on Lords Day for worship.

[These were regulations for fishing and for drying and curing on shore.]

(8) *No person to rob nets, take bait out boats or rob or steal nets.*

(11) *No planter to build house, keep pigs or cattle near ground where fish are dried.*

(12) *Provisions imported for sale necessary for fishing to be free for any person to buy.*

These instructions and annexed laws and ordinances were issued for one year. They were for the preservation of public order and to protect the liberty of fishing from disturbance and interruption. They did not limit the exercise of such liberty, but were intended to prevent its limitation.

Instructions and ordinances of this nature were declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt & Beard, appended to this Memorandum (p. 16).

Br. App. 512. 1660.
Star Chamber rules.
Similar to 1653 regulations.

"Star Chamber Rules of Charles I and additions by Charles II., January 26, 1660."

Rules of this nature were declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt & Beard, appended to this Memorandum (page 16).

Br. App. 517. 1663.
15 Charles II, c. 16.

(7). No person to lay any net in or near any harbour to catch spawn or young fry of Poor John or for any other use except for taking of bait.

[*Regulates fishing*].

"An Act for regulating the Herring and other Fisheries and for Repeal of the Act concerning Madder, 1663."

Clauses (1) to (4) of this Act deal with the packing of herrings taken in English fisheries.

Clause (5) deals with fisheries adjacent to Great Britain. Clause (6) prohibits the collection of duty in Newfoundland on English-caught cod or Poor-John.

Clause (7) was superceded by the Order in Council of March 10, 1670 (Br. App., 518), in which it was provided "That all the subjects of His Majesty's Kingdom of England shall and may forever hereafter peaceably hold and enjoy the freedom of taking bait, *and fishing*, in any of the rivers, lakes, creeks, harbours or roads, in or about Newfoundland." It was also superceded by the British Statute of 1699, 10 & 11 William III, cap. 25 (Br. App., 525), by which the same freedom was conferred upon "all His Majesty's subjects residing within this his realm of England *or the dominions thereunto belonging*." The right was thereby extended to British subjects residing in America.

In both the Order in Council and Act of 10 & 11 William III the rights are to be held and enjoyed "as fully and freely as at *any time heretofore* hath been used and enjoyed by any of the subjects of His Majesty's loyal predecessors," subject to certain rules incorporated in the Order in Council and Act. In neither of these does the provision in Clause (7) appear.

This statute, 15 Charles II, cap. 16, is enumerated among the obsolete statutes repealed by the Statute Revision Act (26-27 Vict., cap. 125), 1863.

Br. App. 518. 1670.

Order in Council for *regulating* fishing trade in Newfoundland.

1. Subjects of His Majesty's Kingdom of England for ever to have freedom of taking bait and fishing in any of the harbours or roads in or near Newfoundland, with *liberty* to land for curing, salting and drying of fish and for cutting of wood for stages, rooms, etc., *provided* they submit to any present and future regulations.

2. No alien to take bait or fish between Cape Race and Cape Bona Vista.

4. No planter to occupy stages, beach, etc., before English fishermen are provided for.

9. No fishing vessel to leave England before the 1st March.

11. No captain to use any stage in any port, harbour or bay between Cape Race and Cape Bona Vista with less than 25 men all of one company.

13. Admirals to see to preservation of peace and good order and the execution of His Majesty's rules for *regulation of the fishery*.

15. No fishermen to remain after end of October.

"Order in Council of Charles II approving the Report of the Council of Plantations, March 10, 1670."

1. The right is to be enjoyed "as fully and freely as at *any time here to fore* hath been used and enjoyed there by any of the subjects of his Majesty's royal predecessors."

These provisions relate to the preservation of public order, and the preservation of the liberty of taking fish. They are also intended to preserve the monopoly of fishing to English fishermen by preventing inhabitants (or planters) of Newfoundland from preempting the beaches used for drying.

There is no attempt to restrict the manner or time of fishing. Clause 15 is intended to prevent fishermen from becoming inhabitants in accordance with the British policy of that period of discouraging settlements in Newfoundland. The fishing season was over by the last day of October, so that this provision was not a limitation upon the liberty of fishing.

The purpose of the Order in Council approving the Report of the Council of Plantations is shown in the following extract from Sabine's Report of 1852 (p. 52) :

"Three years later [1663], the Newfoundland fishery was specially protected by an entire exemption from levies and duties; and the home and colonial fisheries were at the same time assisted by duties imposed on products of the sea imported by foreigners or aliens.

Yet the number of ships employed at Newfoundland declined annually. In 1670, the merchants sent out barely eighty. The decline was attributed to the boat

fishery, carried on by the inhabitants there. Sir Josiah Child, the leading authority of the day in matters of trade and commerce, sounded the note of alarm, anticipating that, if the resident fishermen continued to increase, they would, in the end, carry on the whole fishery, and that the nursery of British seamen would be destroyed. The only remedy he proposed was the annihilation of the boat fishery. Never was a more unjust expedient conceived. The labours, the expenditures, and sacrifices of a large
1412 number of eminent and adventurous men, who had devoted life and fortune to the colonization of Newfoundland, were thus to be counted as worthless and even injurious to the realm. But the views of Child were adopted by the Lords of Trade and Plantations, who determined to break up and depopulate the colony. Sir John Berry was accordingly sent over, with orders to drive out the fishermen, and burn their dwellings. The extent of his devastations under this more than barbarous decree may not be certainly known; but six years elapsed before the mandate of destruction was revoked, and its abrogation was accompanied with instructions to allow of no further emigrations from England to the doomed island. Complaints were made that emigration continued, and various plans were suggested to discourage and prevent it. Meantime, the relations between the resident fishermen and the masters and crews of the ships sent out by the English merchants were hostile to an extent which, at the present day, seems almost incredible. Previous to the edict just noticed the former had petitioned the King for the establishment of some form of govern-

ment, to protect them against the rapacity of their own countrymen—the latter. The merchants opposed the measure, as injurious to the fisheries, and prevailed. The petition of the residents were renewed from time to time, but never with success; and they continued to suffer wrongs and cruelties without redress.

The merchants convinced the ministry or the Lords of Trade and Plantations that the appointment of a governor, and the recognition of the full rights of the inhabitants of Newfoundland as British subjects, would produce the ruinous results anticipated by Child, and, strange as it may appear, no Englishman could lawfully have a home on that island for a long period.”

An order of this nature was declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt and Beard, appended to this Memorandum (p. 16).

“An Act to encourage the trade to Newfoundland 1669.”

The rights granted to British subjects are “for themselves, their servants, seamen, and fishermen,” and are to be enjoyed “as fully and freely as at any time heretofore hath been used or enjoyed there by any of the subjects of His Majesty’s Royal predecessors.”

The purpose of the clauses cited in the British abstract was to prevent the inhabitants of Newfoundland from interfering with the full and free enjoyment of the fisheries by fishermen from Great Britain.

This is shown by Clause 5, which recites that inhabitants of Newfoundland had theretofore preempted shore accommodations to the prejudice of the fishing ships from Great Britain, and provided that such inhabitants

Br. App. 525. 1699.

10 and 11 Wm. III, c. 25.

1. All His Majesty’s subjects residing in England or the Dominions thereunto belonging to have use and enjoy the free trade and art of merchandise, and fishery, and freedom of taking bait and fishing in any of the . . . creeks, harbours, or roads in or near Newfoundland and the said seas, and liberty to land for curing fish and to cut down trees for making stages, &c.; and no alien (not residing in England, Wales, or Berwick) to take bait or fish in Newfoundland.

2. Repeats provisions against throwing ballast into harbours.

3. Same provisions against destroying stages, &c.

4. Provisions as to admirals, and against taking more of the beach or stages than necessary—admirals to settle differences.

12. No rinding of trees after the 25th March; no setting fire to woods. No person after the 25th March to hinder hauling of seines in customary baiting places, or to shoot his seine in or upon any other seines.

1413 14. Admirals to see to enforcement of regulations contained in the Act.

16. Sunday to be strictly observed.

must "relinquish, quit, and leave to the public use of the fishing ships arriving there, all and every the said stages, cook-rooms, beaches and other places for taking bait and fishing," etc.

This distinction between British fishermen and the inhabitants of Newfoundland is also shown by Clause 16 (cited in the British abstract) which requires that the *inhabitants* of Newfoundland "shall strictly and decently observe every Lord's Day, commonly called Sunday," but no such observance is enjoined upon the fishermen from Great Britain. Furthermore *fishing* is not prohibited on Sunday.

The character of the regulations to be enforced by the Admirals, as noted in the British abstract under Clause 14, and the manner of their enforcement are disclosed by the following extract from Sabine's Report in 1852 (p. 53):

"As the century closes we notice the mention of a report of the Lords of Trade and Plantations, in which they so far modify their former order, relative to emigration, as to intimate that, inasmuch as a thousand persons might be useful at Newfoundland, to construct boats and fishing-stages, that number would be suffered to live there, without fear, we may conclude, of official incendiaries and legal robbers. But the gracious privilege thus accorded still placed the resident fishermen at the tender mercies of the merchants and the masters of their vessels; for by an act of Parliament in 1698 (1699), these masters, in the absence of all law, were authorized to administer justice, and to regulate the general concerns of the fisheries and of the colony, almost at pleasure.

Were the inmates of British prisons to be subjected now to

the treatment received by the inhabitants at the hands of these masters, the whole civilized world would join in a shout of indignant condemnation. The first master who arrived at any particular harbor was its admiral for the season; the second was its vice-admiral, and the third its rear-admiral. Thus, at the outset, no attention whatever was paid to the qualifications—to the heads or the hearts—of these strange rulers. Accident—a long passage or a short one, a dull or a quick-sailing vessel—determined everything. The triumph of the English merchants over their fellow-subjects, in this lone and desolate isle, was as complete as that of the warrior who storms a city. In fine, the ‘admirals’ selected the best fishing-stations, displaced at will the resident fishermen who occupied them, drove the inhabitants from their own houses, took hush-money and presents of fish in adjusting cases brought before them for adjudication, and, in their general course, were as arbitrary and as corrupt as the leaders of banditti. There were exceptions, it may be admitted; but the accounts are uniform that, as a class, the ‘admirals’ were both knaves and tyrants. Yet the law which authorized these iniquities bore the title of ‘An act to encourage the trade of Newfoundland.’”

Br. App. 690. 1765.

Regulations by Hugh Palliser (Governor).

1. *No colonist* (except whale fishers) to go to Labrador.

2. No person to resort to Labrador to fish or trade except ship fishers from His Majesty's Dominions in Europe.

3. Regulations in 10 and 11 Wm. III, c. 25, to apply to Labrador.

“Regulations Establishing a British Fishery for Cod, Whale, Seals, and Salmon on the Coast of Labrador, 1765.”

The above endorsement shows the purpose of the Governor's order.

It is in pursuance of the traditional British policy of monopolising all these fisheries for the benefit of the fishermen coming from Great Britain, and the extension of

10 and 11 Wm. III, cap. 25, was appropriate for that purpose.

The general prohibition against fishing by any persons except ship fishers from Great Britain was abrogated so far as American fishermen were concerned by the Treaty of 1783.

These were the very regulations declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt and Beard, appended to this Memorandum (p. 16).

Br. App. 691. 1766.

Proclamation by Hugh Palliser. King's officers have always had my orders to assist all vessels from the Plantations, employed in whale fishery, and pursuant to His Majesty's orders to me All vessels from Plantations will be admitted to Labrador coast, the ancient customs as to cod fishing under 10 and 11 Wm. III c. 25, to be observed.

Whale fishers under necessary restrictions permitted to land in Labrador to cut up whales, a liberty never allowed to them in Newfoundland.

Prohibits whale fishers from Plantations, from 'banking' amongst boats of ship adventurers from Britain, destroying fishing works and firing woods.

Br. App. 543. 1775.
15 George III, c. 31.

Order of Governor Palliser respecting depredations committed on the Coast of Labrador and in Newfoundland, dated August 1, 1776.

This order gave notice that "all vessels from the Plantations will be admitted" to the Labrador coast "on the same footing as they ever have been admitted in Newfoundland," provided that the ancient customs "established in Newfoundland respecting the Cod Fishery" under 10 and 11 Wm. III, cap. 25, were observed.

The restrictions placed upon whalers were to protect the fishing liberties, granted by the Act of 1699 and extended to Labrador, from limitation, and to preserve unimpaired their full and free enjoyment.

An Order of this nature was declared to be without legal effect by the judgment rendered in Jennings & Long against Hunt & Beard, appended to this Memorandum (p. 16).

"An Act for the encouragement of the Fisheries carried on from Great Britain, Ireland, and the British dominions in Europe, and for securing the return of the fishermen, sailors, and others employed in the said fisheries, to the posts there of, at the end of the fishing season, 1775."

Section 1 relates to bounties to be paid to fishing vessels from Great Britain engaged in the bank fisheries for a term of eleven years.

Section 2 grants the liberty of the use of vacant shores of Newfoundland to *such* vessels.

Section 3 relates to bounties to be paid to whaling vessels from Great Britain.

Section 4 was in pursuance of the punitive policy towards the rebellious British colonies in America, which were prohibited from the Newfoundland, Labrador, and Gulf of St. Lawrence fisheries by the Acts of 1775, 15 Geo. III, cap. 10, and 15 Geo. III, cap. 18.

Section 7 protects the full and free enjoyment of the fishing liberty from "any restraint or regulation with respect to days or hours of working," and from the interference caused by being compelled to make entry at a custom-house.

This provision relating to reporting at custom-houses was stated by Lord Elgin in 1906 (U. S. Case App., 987) to be the only regulation in force as to Newfoundland in 1818.

Sections 10 and 11 relate to the free entry of seal-skins into England taken by the crews of British vessels "or by Persons employed by the Masters or Owners of such vessels."

The remaining sections of the Act relate to the return to Great Britain of fishermen, sailors, and others, to legal proceedings, impressment, Greenland fisheries, and bounties to whaling vessels.

The bounty provisions were extended ten years by 26 Geo. III, cap. 31 (1786).

"An Act to amend and render more effectual the several laws now in force for encouraging the Fisheries carried on at New-

Sect. 4. The privilege of drying fish on shore is not and shall not be enjoyed by any of His Majesty's subjects arriving at Newfoundland except from British dominions in Europe.

Sect. 7. Fisher's vessels from Great Britain not to be restricted as to the days of fishing and only to report at custom house on arrival and clearance.

1415 Br. App. 567.
[Above Sects. repealed
by 5 Geo. IV, c. 51, § 1.]

Between 1783 and 1812.

Br. App. 555. 1786.
26 George III, c. 26.

foundland and Parts adjacent, from Great Britain, Ireland, and the British Dominions in Europe; and for granting Bounties for a limited time, on certain Terms and Conditions, 1786."

The first nine sections relate to bounties.

Section 10 provides for the duty on salt imported into Great Britain.

Sect. 11. No person concerned in fishery to use any seine or net for catching cod by hauling on shore or tucking into a boat, with mesh less than 4 inches.

Section 11 provides that "it shall not be lawful to or for any person or persons concerned or employed in carrying on the *said* fishery, or for any seaman or fisherman hired for the purpose of carrying on the *said* fishery," &c.

The *said* fishery was the *bank fishery* prosecuted from Europe by British vessels entitled to bounties, and the regulation was clearly intended to increase the size of the cod taken, in order that the bounty should not be claimed upon a small and inferior quality of fish. There is nothing in the Act to show that the provision was intended to preserve the fish. Furthermore, as the provision was limited to those "concerned or employed in" or "hired for the purpose of carrying on the *said* fishery," it applied only to those vessels from Great Britain operated under the bounty provisions of the Act. It was in no sense a regulation of the Newfoundland fisheries.

Sect. 15. Forbids sale of boats, seines, bait, etc., to any alien.

There is a manifest difference between *Section 11* and *Section 15* in the fact that *Section 11* is limited in its application to persons "employed in carrying on the *said* fishery," while *Section 15* is applicable to persons "*residing* or carrying on fishery in the said Island of Newfoundland." This emphasizes the limited application of *Section 11* to the bounty-fed fishermen coming from Great Britain.

The other sections of the Act are for the purpose of preventing trade with foreigners, particularly the French at St. Pierre and Miquelon, thereby hampering the fishing operations of these competitors, and retaining the exclusive trade of Newfoundland for the benefit of the merchants of Great Britain in accordance with the then policy of colonial monopoly.

Between 1812 and October 20, 1818.

No statutes cited in the British abstract.

NOVA SCOTIA.

1416 BRITISH ABSTRACT OF STATUTES, PROCLAMATIONS, &C.

CORRECTIONS, ADDITIONS, AND NOTES.

Before 1783.

Br. App. 586. 1665.

Proclamation by Thomas Temple (Governor). For regulating . . . fishing.

"Proclamation of Thomas Temple as Governor of Nova Scotia, 1665."

The preamble recites that the orders contained are published and declared "for the encouraging and promoting of trade, and protecting His Majesty's subjects in their just rights."

1. If *any person* comes into jurisdiction and—fishes without license, penalty.

(1) If any person shall come into *any part of this* jurisdiction and *plant, build, fish, or trade* without license from Governor or Deputy, he shall forfeit vessel and cargo, or suffer other penalty.

2. Duly observe Sunday, and not to take any *liberty* by fishing to profane the same.

3. *No vessel from New England* to come into jurisdiction and bring goods and trade without license.

(3) Has to do solely with *trade*.

(4) Provide that "all inhabitants and fishermen" continuing two months "in this jurisdiction" must obtain a license to depart.

The inhabitants of the region were French and hostile to the British authorities. The licenses

5. Licensed fishermen not to be disturbed.

6. All persons to endeavour the preserving of the fish and the banks; none to take fish during spawning season; no offal to be thrown overboard.

required were evidently to prevent sedition, and to protect the government.

(5) "All persons licensed to fish in this jurisdiction, *trade being settled in any free place*" shall not be disturbed or interrupted.

This section is intended to prevent any interference with the full enjoyment of the liberty of using unoccupied shores. It does not apply to fishing.

This proclamation was issued, when Great Britain held nominal sovereignty over Nova Scotia, Port Royal having been captured in 1654. The whole of Nova Scotia was delivered up to France in 1668 or 1669 pursuant to the 10th and 11th articles of the Treaty of Breda. (Haliburton, Nova Scotia, 1829, vol. i, pp. 61-65).

The orders promulgated by the proclamation, therefore, were abrogated by the treaty and the recession under it.

Br. App. 587. 1770.

10 Geo. III, c. 10.

By Governor, Council and Assembly.

1. No fishermen to throw offal into sea *within three leagues* of shore.

Between 1783 and 1812.

Br. App. 591. 1786.

26 Geo. III, c. 7.

"An Act for the benefit of the Fishery on the Coasts of this Province, 1770."

1. As this provision, which is a matter of police regulation, applies to acts beyond the territorial jurisdiction of the province, it could only affect British subjects, and did not apply to American fishermen after 1783.

"An Act in addition to, and amendment of, an Act, made in the third year of the reign of His Present Majesty, entitled, an Act to prevent nuisances by hedges, weirs, and other encumbrances,

obstructing the passage of fish in the rivers in this province, 1786."

The preamble recites that the course of several kinds or species of fish "has been greatly obstructed or diverted" by 1417 "the injudicious placing of seines and nets in certain havens, creeks and harbours" to the "manifest injury of individuals and the community at large."

Sect. 9. Justices to regulate manner of placing nets and seines in havens, rivers, creeks, and harbours of province.

To remedy this interference with the run of fish, presumably salmon, shad, and alewives, and to protect the river fisheries from injury, it was provided that Justices should hold a Special Session for "regulating the manner of placing nets and seines in all such havens, rivers, creeks and harbours" as they shall judge necessary "to prevent the *afore-said evil*."

There was no purpose expressed to protect the fish, but rather a purpose to protect the *full enjoyment* of the fisheries conducted in the rivers, as shown by the title and preamble to the Act.

Furthermore, there is no evidence that the Justices met in Special Session or ever adopted any orders under this Act; but, in any event, the Act expired, by its terms, with the end of the year 1787; and, as it did not go into force until publication, it may never have been operative.

There is no evidence that the Act was renewed, or any orders made under it continued, and, as the clause imposing penalties died with the Act, the orders made, if any, would have been impotent.

Between 1812 and October 20, 1818.

No Statutes cited in the British abstract.

NEW BRUNSWICK.

BRITISH ABSTRACT OF STATUTES,
PROCLAMATIONS, &C.CORRECTIONS, ADDITIONS, AND
NOTES.*Between 1783 and 1812.*

Br. App. 595. 1793.

33 Geo. III, c. 9.

*By Lieut. Governor, Council
and Assembly.*

Sect. 1. No net or seine to be placed across any river, cove or creek in the Province so as to obstruct course of fish.

Sect. 9. No net in harbour of St. John more than 20 fathoms long, and no net to be in water in any part of Province between sunset on Saturday and sunrise on Monday.

"An Act for regulating the Fisheries in the different Rivers, Coves and Creeks of this province, 1793."

The purpose of this Act is to prevent injury to the river fisheries resulting from obstructing "the natural course of the fish in any river or place where they usually go" (referring presumably to the run of salmon, shad, and alewives in the spring), not by protecting the fish but by protecting an equal enjoyment of the liberty of fishing.

The provision of *Section 1* is that no net or seine shall be set across any river, cove or creek.

The other provisions of the Act manifestly relate to nets set from shore, a method of fishing confined to local fishermen, and never employed by fishing vessels coming from the United States.

The Sunday prohibition relates to this *shore fishery*.

The limit placed on the length of the net was evidently to prevent it from extending from the shore so far as to obstruct the navigable channel in the harbor.

That the fishery was one conducted from shore is shown by the New Brunswick Act of 1794, 34 Geo. III, cap. 3 (Br. App., 596), to "explain and amend" the Act of 1793. In the Act of 1794 it is provided that only one length of nets "shall be set in the

same line running into the 1418 water in the Saint John river or in the harbor of Saint John, and if any person shall set any length of net running into the water" etc. he shall be punished.

Br. App. 597. 1799.

39 Geo. III, c. 5.

By Lieut. Governor, Council and Assembly.

Sect. 1. Repeals Act of 1793 as to County of Northumberland.

In Bay of Miramichi and its branches no net to be set in the bay except as therein permitted (elaborate provisions as to length of nets in different places). No net to be in water between sunset Saturday and sunrise Monday.

Sect. 2. Penalty on any person who sets net in Miramichi Bay except as permitted.

Sect. 9. Magistrates to make regulations for fishing in all other rivers, coves and creeks in said County.

[N.B. *Whole of Miramichi Bay in the County.*]

There is no evidence that the Act was ever enforced against American fishermen.

"An Act for Regulating the Fisheries in the County of Northumberland, 1799."

Like the Act of 1793, which it in part repealed, this Act is directed to the regulation of shore and river fisheries "in the Bay and River Miramichi and its branches." It defines certain private fishing beaches and limits the length of nets "*to extend into the Bay*" from such beaches and the length of nets "*to extend into the River*" from defined lots on its banks.

The local character of the regulations is shown by the provision that no net was to be set along a certain part of the shore "but by the *Acadian* or other inhabitants of lower *Bay du Vin*." Clearly this provision shows that the act was to apply only to local fishermen and not to American fishermen under the Treaty of 1783.

In the Sunday prohibition, it is stated "that this clause shall extend to the cross-net claimed by the heirs of the late *William Davidson*, Esq., at the *Elm Tree* in the southwest branch of *Miramichi* river aforesaid." The local character of the prohibition is plainly shown.

The defining of private fishing rights on the inhabited shores of Miramichi Bay and on the banks of Miramichi River are not regulation of the fisheries in general. Their purpose was not to protect the fish or to limit the vessel fishery. The limitation upon nets from the shore, on the contrary, operated as a protection of the fishing liberty of vessels by preventing the nets from the shore being unreasonably extended therefrom. Nor did the provisions interfere with the use of the shores by Americans under the

Treaty of 1783 since they were only entitled to resort to "*unsettled Bays, Harbors, and Creeks.*"

In no way, therefore, can this Act be construed into a regulation of the fishery secured to the United States by the Treaty of 1783.

Br. App. 604. 1810.

50 Geo. III, c. 20.

By President, Council and Assembly.

Sect. 1. No net over certain size to be set in certain parts of the harbour of St. John.

Sect. 2. No net at Shag Rocks, nor any nets fastened together, nor any drift net to be used in said harbour.

Sect. 3. No drift net more than 30 fathoms to be used above the Boar's Head in river St. John. Drift nets to be 30 fathoms apart. No nets in water between sunset Saturday and sunrise Monday.

Between 1812 and October 20, 1818.

Br. App. 605. 1818.

"An Act for the further regulation of Fisheries, and for preventing their decay, 1810."

Section 1. The places referred to in which no net more than 20 fathoms long is to be set, cover the eastern channel of the harbor, lying north and east of Partridge Island which separates the two channels of the harbor.

Section 2. The first part of the section relates to the western channel of the harbor lying west of Partridge Island. The second part relates to setting drift nets in the navigable portion of Saint John River, Saint Croix River, and Saint John Harbor.

Both the foregoing sections, are intended clearly to keep the two channels of the harbor free from obstructions which might cause danger to passing vessels. They are not intended to protect the fish or the liberty of 1419 fishing, but, in any event, they relate to fishing by *local* fishermen operating from the *shore*.

Section 3. The first part of the section relates exclusively to the river fisheries, and has the same purpose as the Acts of 1793 and 1799.

The Sunday prohibition, as in the case of the preceding Acts, deals with the *shore fishery*.

58 George III, c. 2. (11 March).

*By Lieut. Governor, Council
and Assembly.*

Prohibits casting of offal on or about coasts of Grand Manan or into any other bay or harbour of this Province in fishing grounds.

This Act was passed at a time when American fishermen were no longer permitted to enjoy the liberties, which they had under the Treaty of 1783.

LOWER CANADA.

BRITISH ABSTRACT OF STATUTES, CORRECTIONS, ADDITIONS, AND
PROCLAMATIONS, &C. NOTES.

Before 1783.

No Statutes cited in the British abstract.

Between 1783 and 1812.

Br. App. 554. 1785.

Order by the King to Governor of Quebec. Recites *Bay of Chaleurs in Province of Quebec.*

Enables Governor to grant use of beach to His Majesty's subjects.

Directs Governor with consent of Provincial Council to establish *local regulations*, to prevent disputes between fishermen resorting to said beach.

"Order providing for regulation of fishery at Bay of Chaleur, July 25, 1785."

As the United States, under the Treaty of 1783, had no right to dry and cure fish on the shores of the Province of Quebec, this order and any "*local regulations*, to prevent abuses, as well as disputes and misunderstanding between the fishermen resorting to the said beach or shore," if any were framed, have no application to fishermen coming from the United States.

Br. App. 53. 1786.

Instructions to Governor of Province of Quebec. Regulations for protection of fisheries in Gulf of St. Lawrence and on Labrador coast required.

"Instructions to Lord Dorchester as Governor of the Province of Quebec, August 23, 1786."

The instructions directed the Governor "to establish on that coast [Labrador] the regulations *in favour of British fishing ships* which have been so wisely adopted by the Act of Parliament passed in the reign of King William the Third for the *encour-*

Br. App. 592. 1788.

28 George III, c. 6.

*By Governor and Legislative Council.**Recites Bay of Gaspé and Bay of Chaleurs in this Province.*

Sect. 1. His Majesty's subjects to have freedom of taking bait and fishing with *liberty* to land for curing fish in certain parts.

Sect. 2. Fishermen from Great Britain may reserve necessary parts of beach.

Sect. 3. No person to rind trees or set fire to woods, or to hinder hauling of seines or shoot seine within another seine.

Sect. 4. No ballast to be thrown in harbours, and no offal to be cast into sea *within 2 leagues of shore.*

Br. App. 600. 1807.

47 George III, c. 12.

By the King with consent of Legislative Council and Assembly and Province of Lower Canada.

Sect. 1. Freedom to his Majesty's subjects to take bait and fish with liberty to land for curing fish in certain parts.

ment of the Newfoundland fishery."

The principle of the Act 10 and 11 Wm. III, cap 25, to which reference is made, has been already commented upon.

There is no evidence that the Governor ever issued any regulations under these instructions, which were to prevent the establishment of private rights of fishing and to keep the fishery open and free from interference.

"An Act or Ordinance for regulating the Fisheries in the River St. Lawrence, in the Bays of Gaspé and Chaleurs, on the Island of Bonaventure, and the opposite shore of Percé, 1788."

The same comment, made concerning the Order issued to the Governor of Quebec in 1785, applies here. On the shores 1420 described fishermen coming from the United States had no right to dry and cure under the Treaty of 1783.

The provision in *Section 4* as to throwing offal overboard, being extraterritorial, applied of necessity only to British subjects.

"An Act for the better Regulation of the Fisheries in the inferior district of Gaspé, and to repeal an Act or Ordinance therein mentioned, April 16, 1807."

Section 1. Provides that, whereas "the Fisheries have been found beneficial to the Trade of the mother country," the peaceful use and enjoyment to British subjects shall be preserved.

Sect. 2. Fishermen from British dominions may reserve necessary parts of unoccupied beach.

Sect. 3. No ballast into harbours and no offal into sea *within 4 leagues from shore.*

Sect. 4. No one to annoy or obstruct hauling of seines.

Sect. 15. Magistrates may make *reasonable regulations* respecting the fisheries—particularly declare in what manner persons shall demean themselves in fishing and with what manner of nets and engines in said *rivers and streams*—and for *regulating the manner of placing seines and nets in havens, rivers, creeks and harbours in inferior District of Gaspé*—such regulations to be published—and to apply to *that part of such district to the west of Mackerel Point in Bay of Chaleur* (i. e. to whole of the Bay of Chaleur).

The sections relating to the use of the shores are subject to the same comment made concerning the Order of 1785 and the Act of 1788.

Section 3 is extraterritorial and can, therefore, apply only to British subjects.

Section 15 relates to local fisheries in the rivers and on the shores of harbours and creeks. The power conferred on magistrates is permissive; there is no evidence that it was ever exercised; and there is no evidence that any regulations were ever published.

The note in parentheses in the British abstract of *Section 15* “i. e. to whole of the Bay of Chaleur” is manifestly erroneous since the Bay of Chaleur lies *between* the Provinces of Quebec and New-Brunswick.

The Proclamation of His Majesty George III, given October 7, 1763, in defining the Southern boundary of Quebec, stated that the line, after “crossing the river Saint Lawrence and the lake Champlain in forty-five degrees North latitude, passes along the high lands which divide the river Saint Lawrence from those which fall into the Sea, and also along the *North coast* of the *Bay des Chaleurs* and the coast of the Gulf of Saint Lawrence to Cape Rossiers.”

(Br. App. 533.)

Between 1812 and October 20, 1818.

No Statutes cited in the British abstract.

SELECT CASE FROM THE RECORDS OF THE SUPREME COURT OF NEWFOUND-
LAND.

(Argued and determined in the Supreme Court, St. Johns, New-
foundland.)

From the year 1817 to the year 1822.

JENNINGS AND LONG *against* HUNT AND BEARD.

October 26, 1820.

On this day the Chief Justice delivered the following judgment:

The defendants, Phillip Beard and Co., are engaged in an extensive salmon fishery at Sandwich Bay on the Labrador, where they have a fixed establishment.

The plaintiffs, Jennings and Long, are British subjects, and reside at Halifax, in the province of Nova Scotia, from which place they have, for a few years past, resorted to Sandwich Bay for the purpose of a salmon fishery likewise. In the pursuit of their common occupation, the parties appear to have been brought into contact upon disputed points of right; the defendants claiming exclusive property in all the rivers in Sandwich Bay, as well as the circumjacent coves within 3 miles of the mouths of the rivers; and the plaintiffs contending for the right to place their nets in any vacant spot not actually indispensable to the others fishery. While the parties were in difference, the Surrogate, Captain Robinson, of His Majesty's ship "Favourite," arrived at the Labrador, and the defendants Beard and Co. immediately brought their case before him, alleging their rights, and complaining of the trespass which had been committed by Jennings.

* * * * *

In looking into the proceedings which took place before the Surrogate at Labrador, it does appear that he had received certain rules and regulations, in the form of a proclamation, expressly applying to the case before him, and that his decision was founded upon those regulations; but it is then offered in explanation of this circumstance, that the Governor's proclamation necessarily formed part of the Surrogate's proceedings, and was, in fact, the law upon which he founded his judgment. In support of which position, a bundle of orders and other acts of the local Government has been handed into Court, containing a series of regulations and observances for the trade and fisheries of this island, and variously affecting the persons and property of its inhabitants, from which I am to infer that a legislative authority in this Government, unknown to the laws of England, but claimed under a prescriptive exercise in Newfoundland, is

now, for the first time, sought to be established in this Court. So large, and, indeed, so dangerous an innovation upon the accustomed principles of adjudication in the Court, ought not to be passed over unobserved. If the proclamation by which the Surrogate is stated to have been governed, be legal, then, indeed there can be no doubt that it is as binding on this Court as it was on the Surrogate Court; and that it will be equally binding on the King in Council, should the case go to an Appeal. There is no dispensing power in Courts, and that which was the law of the case at Labrador, will be the law in London. I am bound, therefore, to apply to it the same considerations which, I think, would be applied by the Lords of Appeal. It is a determined principle of law, that the King holds a legislative power over conquered or ceded countries, but that no such power is held over countries originally settled by British subjects. This island and the Labrador were first discovered by the English, and peopled by emigrants from the United Kingdom. But the application of the principle does not rest upon a question of geography, it is expressly declared by the statute 49th Geo. III, cap. 27, that the Courts in Newfoundland shall be governed by the laws of England, so far as they may be applicable; and the same course of administering justice, is, by the statute of 51 Geo. III, cap. 45, extended to the Labrador. These statutes are affirmative of what was before the common law of all the English colonies; over which it has been solemnly recognised in the celebrated West Indian case of *Campbell v. Hall*, (Cowp. Rep. 204), that His Majesty holds no legislative authority. The King has, indeed, large prerogatives; but the prerogatives of the Crown are defined by the constitution, and form a part of the law of the land. It will not be contended that there is a prerogative peculiar to Newfoundland; and if there be not, then a proclamation for regulating the trade and fisheries of this island and its dependencies, must rest upon the same foundation, as a proclamation for governing the trades and fisheries of Great Britain.

"Proclamations," says Blackstone, (vol. 1, p. 270), "are binding upon the subject, where they do not either contradict the old laws, or do not establish new ones, but only enforce the execution of such laws as are already in being, in such manner as the King shall judge necessary." And I am not conscious of having seen any act of state, in modern times, which has not been perfectly in unison with this first principle of the constitution. It is a mere sophism to distinguish between regulations and laws. Everything which prohibits that which was not prohibited before, is a law. But to bring this matter at once to the test, let us look at the code of regulations for the fishery and trade on the coast of Labrador. The first article "1422 declares "that no inhabitant from Newfoundland, nor any person from any of the colonies, shall, on any pretence whatever, go to the coast of Labrador; and if any such are found there, they shall be corporally punished for the first offence; and the second time, their boats shall be seized for the public use of British ship fishers upon that coast." The regulation which debars a million of His Majesty's subjects from the exercise of a common right, submits their persons to ignominious punishment, and their property to

^a Rules and Regulations by Governor Pallisser, 1765, printed at British Case Appendix, p. 690, see *ante*, p. 6.

forfeiture, may well be called a law; and if it be, however penal its provisions, I am bound to enforce them. Now it is well known that the principle fisheries at Labrador are actually carried on by people from this island; and I have purposely put this case, because I wish it to be clearly seen to what extravagant consequences the principle contended for must lead. The public instrument more immediately connected with the proceedings before the Court is, indeed, of a very different character, and I am aware that it was framed with the benevolent view of quieting the differences which had arisen at Sandwich Bay. But I apprehend that *the claims of individuals to the right of fishing in the seas and rivers of that bay could not lawfully be affected by the regulations of the Government.*

APPENDIX (K).

Extracts from French Official Correspondence concerning the Nature of the French Treaty Rights in Newfoundland.

No. 110.—*Admiral Krantz, Minister of Marine, to M. Goblet, Minister of Foreign Affairs.*

PARIS, July 10, 1888.

We have upon the French shore an absolute right of exploitation, perhaps exclusive, which takes precedence over everything. The English have, at the most, only a right ("faculté") of conditional fishing and of tolerance. Their competition cannot trouble us nor interrupt us. It should cease as soon as it affects us. Under these conditions (and this point has never been, so far as I know, the object of dispute) it is we who are the judges of the trouble and of the interference, and when we establish their existence we have the right to require that they be removed. To admit the contrary would be to reverse the rôles and to abandon the very principle of our right. [Livre Jaune, 1891, Affaires de Terre-Neuve, p. 167.]

M. Waddington, French Ambassador to Great Britain, to the Marquis of Salisbury, Secretary of State for Foreign Affairs.

LONDON, December 15, 1888.

In any case, the British declaration says that . . . "The XIIIth Article of the Treaty of Utrecht, and the method of carrying on the fishery, which at all times has been acknowledged, shall be the plan upon which the fishery shall be carried on there: it shall not be deviated from by either party; the French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of His Britannic Majesty, on their part, not molesting in any manner the French fishermen during their fishing, nor injuring their scaffolds during their absence."

What is understood by "the method of carrying on the fishery" is defined by the developments following this phrase in the text of the declaration. It is the *modus vivendi* of the French on a coast which has ceased to belong to them, which is regulated; it is their provisional encampment, their right to cut wood necessary for their small repairs, which is confirmed; it is, in a word, the most thorough commentary on the territorial rights of the British Crown in respect of the temporary servitude ("servitude temporaire") agreed to by it. "The method of carrying on the fishery" signifies the international police regulations which shall govern the relations of the fishermen of the two nations, and an impartial examination precludes

the discovery of the least restriction on the method of fishing of the French, or on the manner of preparing the fish, provided that the French establishments preserve, as they do to-day, the character of "temporary buildings" possessed by the scaffold. [Blue Book, Correspondence respecting the Newfoundland Fisheries, 1884-1890, pp. 192-193.]

1423 No. 149.—*Admiral Krantz, Minister of Marine and Colonies, to M. Spuller, Minister of Foreign Affairs.*

PARIS, October 15, 1889.

I have received the report of the fishing season of the Commandant of the Naval Division of Newfoundland.

The two questions which are there mentioned as having a special interest at the present moment are those of the lobster fishery and of the policing of the fishery upon the French shore.

Concerning the latter question, it has been admitted until now that if an English cruiser was present we should demand from it the removal of obstacles by which the Newfoundland fishermen could disturb ours, but that when our cruisers were alone they should themselves suppress these obstacles. This manner of procedure reconciled in a reasonable and proper manner for everybody our status of usufructuary with the right of sovereignty of England, and we have never demanded more.

But the doctrine maintained by the new Commander of the English Division and the acts by which he supports it destroy this order of things. This would mean, according to Admiral Walker, that English property could not be interfered with by our cruisers.

This new state of affairs would create in our station an unacceptable condition, while at the same time it would unsettle the conditions of the enjoyment of our rights. If, although proprietors assured of the right of not being disturbed in our fishing industry in Newfoundland, we are, however, no longer the judges of what is an interference with us; if the British cruiser present alone determines for itself the question of interference and removes it according to its judgment; if, finally, in the absence of the English cruiser it is the transgressor who is obliged to judge and condemn himself, I ask what substantial and important right remains to us of those so formally guaranteed by the treaties and the Royal declarations of the last century. It is evident that our rights, not to be illusory, admit of another sanction, and that in exercising, as they claim to do up to the most extreme limit, the power of superior police and of execution which we have abandoned to them to the present rather by courteous deference and in a spirit of conciliation than to subject ourselves to a legal obligation, the English officers exceed the bounds of propriety and violate our rights. If it is necessary to revert to principles and to apply them rigorously, which might perhaps be disagreeable, but to which the new English course of action constrains us, we may say that it is not right that a sovereignty be subjected to the mere pleasure of another sovereignty upon which it is not dependent; in the enjoyment and preservation of a certain right in which another nation has no share; that since we are invested with an incontestable and uncontested right of fishing freely without be-

ing troubled by competition within the littoral waters of the northern and western coasts of Newfoundland, our public power is obliged to assure us the exercise of this right and the suppression of any interference with it; that it cannot depend in this regard upon another sovereignty, which would thus itself become the master and the dispenser of a property which does not belong to it; and that consequently for the protection of the liberty of French fishing, it is we, and we alone, who have upon the French shore the right of determination and of execution in case of any violation of our right in this domain. This doctrine is, in my opinion, in strict conformity with the international principle of independence of States.

It also seems to me we always could maintain and apply it. It is probable that the English Government in our place would not have hesitated to act in this manner. We have been more yielding. In a complex and delicate situation we have felt obliged to adopt compromising measures, and we have consented to share with English authority a right of police which belongs exclusively to us.

Taking into consideration the changed conditions, would it not be advisable to put ourselves upon the basis of strict law in the discussion which will not fail to present itself in the matter of the removal of the traps by Commandant Reculoux and to contest in a formal manner the right of the British cruisers to take cognisance of the facts which concern exclusively the exercise of our rights of fishing? On the other hand, consistent with the thesis I have just indicated, I believe that we should continue to remove, as we have always done, in the absence of British cruisers, the nets and English traps which interfere with the fishing industry of our nationals. [Livre Jaune, 1891, *Affaires de Terre-Neuve*, pp. 284–286.]

No. 156.—*M. Barbey, Minister of Marine and Colonies, to M. Spuller, Minister of Foreign Affairs.*

PARIS, December 15, 1889.

My predecessor always claimed, and I claim as did he, that this invasion upon parts of the French shore which are thus withdrawn from our exploitation constitutes a spoliation of that which is our legitimate and absolute property.

I claim that we have the right to stop this act of violence, to oppose it, to destroy its effects, provided that it affects our sovereignty, which we have the incontestable right to defend. We are just as much masters of our right to fish, guaranteed by the treaties, 1424 as we are of our territory. Since the English recognise, at least, our right not to be interfered with in the waters of the French shore, it belongs to us to pass upon the interference and to put an end to it. To maintain the contrary would be to say that we are the subjects of the English Government for the preservation of property which belongs to us.

* * * * *

We have, as I have shown above, the right to ascertain the interference and to put an end to it. Until now, out of deference for the local sovereign, we have demanded from its representative present

the removal of the obstacle whose existence we have established; but we took action ourselves when we were alone. This is exactly what happened in the present instance. Our conduct is not in any sense unprecedented or abnormal, but in the future, I believe, like my predecessor, that we should go further. Since the English division refuses to remove the obstacle when we demand it, we ought to do so ourselves. It is our right, as I have proved above. [*Livre Jaune*, 1891, *Affaires de Terre-Neuve*, pp. 292-293.]

No. 182.—*M. Barbey, Minister of the Marine, to M. Ribot, Minister of Foreign Affairs.*

PARIS, June 25, 1890.

I have taken note of the letter that Lord Salisbury addressed, under date of the 29th May last, to our *Chargé d'Affaires* at London, and which concerns our right validly to determine, without the intervention of the English, the obstruction to the fishing of our nationals and to remove, thereupon, this obstruction—especially in the absence of English authority.

Without here entering into an examination of the questions of fact, upon which I could have several observations to make, I shall examine Lord Salisbury's doctrine.

This doctrine seems to me unacceptable. We have, in the waters of the French shore, a right (*faculté*) of partial sovereignty, consisting in a right of privileged fishery exclusive of all obstruction. Now I do not conceive such a right as belonging to a nation without the right of maintaining order, of preserving, and of defending it. A nation is not like a private individual, who is obliged to demand justice from the authorities. It preserves its rights itself. If our dominant right of fishing within the waters of Newfoundland can only be exercised according to the sovereign judgment of the English Government, it is to this Government that it belongs and not to us.

Lord Salisbury asks "whether His Excellency is prepared to admit that in cases of right secured by treaty to British subjects within French territorial jurisdiction, His Majesty's Government are to be regarded as the sole judges whether such rights are infringed and is entitled to direct British officers to protect them by force against French citizens without any reference to French authorities?" To this we may reply, reversing the question, "Would the British Government admit in such a case, if the right of its subjects were of a dominant character and exclusive of every obstruction to its exercise, that the French Government should be the judge of the obstruction and consequently master of the exercise of the right?"

We have admitted, in fact, that if an English cruiser were present, it would remove the interruption caused by its nationals and pointed out by us, and that our direct action would only be exercised when our cruisers were alone present. This was the maximum of concession which we could make and it supposes that the English cruiser present, to which we abandon the execution, will not contest our judgment of the fact of interruption and will not attempt to substitute in this matter its judgment for ours. No question would ever have arisen if the matter had rested here, which satisfies at one and

the same time the interests of justice and the legitimate susceptibility of the authorities in question.

Lord Salisbury, interposes the Declaration of King George, wherein it is said that the English sovereign will take "the most positive measures for preventing his subjects from interrupting in any manner, by their competition, the fishery of the French during the temporary exercise of it which is granted to them upon the coasts of the island of Newfoundland."

But wherein does this engagement to cause our rights to be respected withdraw from us the right to assure ourselves of their enjoyment? From the moment that there was imparted to French sovereignty a property, an active servitude in English territory, it required an express and formal text to stipulate that this sovereignty should be deprived of the right to police its grant and defend it. Now this text does not exist and the promise of the cooperation of King George does not make good its absence.

Further, the English Government itself has very explicitly recognized that it does not find itself as against us within the waters of the French shore upon the footing in which a sovereign State is placed with reference to a foreigner. I read, in fact, in a letter addressed under date the 12th June, 1884, by Lord Derby to Sir J. H. Glover, Governor of Newfoundland, regarding the project of a convention then under discussion, in which our right of police over English vessels at Newfoundland was expressly established. I read, I say, this characteristic phrase: "The stipulations of the North Sea Convention" (the Minister alludes to The Hague Convention, in which the right of police was reciprocally stipulated) "no doubt 1425 apply to waters which are not territorial; still the peculiar fisheries rights granted by treaties to the French in Newfoundland invest these waters during the months of the year when fishing is carried on in them both by English and French fishermen with a character somewhat analogous to that of a common sea for the purposes of fishery."

Before and after this phrase Lord Derby describes this treaty right recognised by the project of convention as a new privilege, but he is none the less obliged to recognise in the passage which I have just quoted that English and French find themselves along the French shore in quasi common waters and not at all within a region having all the characteristics of territoriality. The analogy with common waters is, moreover, inexact. No person has a privileged right in common waters. While we have a right of exclusion within Newfoundland waters it would therefore be more in conformity with the truth to say that the maritime zone which washes the French shore is analogous to French territorial waters.

Finally, we cannot subscribe to the thesis of Lord Salisbury, and he, in our place, would certainly not subscribe to it. Our right is to exploit the French shore and not to be interfered with by competition. We have the right to prevent the interference since we have the right not to submit to it. And if by deference and courtesy we invite English cruisers to take action we cannot admit that they contest its object, because this would be to contest our right itself in subjecting it to a determination upon which it no longer depends. [*Livre Jaune*, 1891, *Affaires de Terre-Neuve*, pp. 329-331.]

M. Delcassé, Minister of Foreign Affairs, to the Ambassadors of the French Republic at Berlin, Berne, Constantinople, Madrid, St. Petersburg, Vienna, Washington, to His Majesty the King of Italy, to the Pope, to the Minister of the Republic at Tangier, and to the Diplomatic Agent and Consul-General of France at Cairo.

PARIS, April 12, 1904.

The great interests both of a moral and material nature which are involved in the *entente* between England and France called forth a peaceful settlement of the questions upon which the two countries were divided and whence under certain circumstances a conflict might have arisen. Both at London and in Paris the two Governments took these matters into consideration. The visits exchanged last year between King Edward and the President of France showed that public opinion on both sides of the Channel was favourably disposed toward an arrangement.

In the course of the conversation which I had the honour to engage in with Lord Lansdowne on the 7th July, the eminent Minister of Foreign Affairs of the King and I examined one by one all the problems which presented themselves before us. It was recognised that it was not impossible to find a solution equally advantageous to both parties in the case of all of them.

Our common efforts which a like spirit of conciliation at all times directed, resulted in the agreements of the 8th April of which I append hereto the authentic text, adding some explanations upon their nature and their import.

Newfoundland.—The affairs of Newfoundland were among those which on numerous occasions had given rise to discussions increasingly troublesome. Their origin lies in the remote past. Article 13 of the Treaty of Utrecht had abandoned to Great Britain Newfoundland and the adjacent islands. It was only on the western coast and on a portion of the eastern coast that we could take and dry fish and then only during the customary fishing season. Every permanent establishment was forbidden to us.

The increasingly frequent difficulties to which the execution of the Treaty of Utrecht led necessitated a special clause in the Treaty of Versailles of 1783, which was completed by the declaration of King George of the same date, the object of which was the avoidance of daily quarrels between the fishermen of the two nations.

In spite of all precautions taken it may be said that in the course of the last century hardly a year passed in which the exercise of our privilege was not the cause of complaints or collisions. The population of Newfoundland, which in the beginning numbered hardly 4,000 or 5,000 souls, increased gradually to 210,000. In the desire of the latter to develop the resources of their island the French shore presented itself to them as closed to all progress; they could enjoy no benefits in a region in which they hoped to find mines and soil favourable to agriculture, and which we ourselves could not utilise. Thus hostile opinion began to arise against our privilege. The irresistible pressure of the necessities of existence in an uninviting and hard climate weakened in an increasing measure day by day the barriers of the ancient servitudes ("*servitudes anciennes*") and in spite of our constant protest the inhabitants of the island established themselves gradually along a portion of the coveted shore.

Our resistance to these invasions became the more difficult because, while the island saw its population and its requirements increase, the number of our fishermen frequenting the French shore diminished year by year. From 10,000, the number of fishermen in the middle of the last century, it decreased to 400 or 500, until it reached last year scarcely 238. For the benefit of these few fishermen, and for the few weeks in the year which they devoted to fishing in these regions, the inhabitants of the country saw access to and enjoyment of almost half the coast of the island forbidden to them.

1426 It was this state of things, impatiently borne, which caused the Parliament of Newfoundland to reject the arrangements concluded between the Cabinets at Paris and at London in 1857 and 1885 for the purpose of bringing about a compromise between the rigour of ancient treaties and the exigencies of the present situation.

The latter of these agreements contained a stipulation which accorded to us the right of purchasing bait, that is, herring, capelin, squid, &c., necessary for the cod fishery. This was the reason which induced the Parliament at St. John's to reject the arrangement of 1885. In the following year they even voted the Bait Act, the object of which was to forbid the sale of bait to foreigners. This law ceased provisionally to be enforced from 1893 on, but the Newfoundland Parliament in 1898 imposed a tax upon the sale of bait, which, in default of an express stipulation, it was feared might be applied along the French shore.

At the same time, with the question raised by the Bait Act, a new element of conflict arose by reason of an industry of recent origin in Newfoundland—that of the lobster fishery, the exercise of which on our part on the French shore was contested because the lobster was a *crustacean*, and the stipulations of the Treaty of Utrecht had in view *fish* only. In 1890 a *modus vivendi* was arranged on the basis of the state of affairs existing on the 1st July, 1889. This arrangement, essentially temporary, and first limited to the season of 1890, was, in default of a better, renewed thereafter, at times under great difficulty. A refusal on the part of the Parliament of Newfoundland would have sufficed to bring about inextricable complications.

In this situation the urgent necessity was imposed of seeking a definitive solution. Our rights in Newfoundland were composed of two elements; the fishery, that is to say, the use of the territorial waters, and the drying of fish, that is, the use of the shore. By reason of its exclusive character, this latter right had become unbearable to the inhabitants. We consent to abandon it. But it must be observed that the circumstances are no longer the same as in the time of the treaty of Utrecht, the drying being possible and being actually carried on either on board ship or, thanks to the rapidity of communication, at St. Pierre or Miquelon, or even in France. On the other hand, our right of fishing in territorial waters, which is the essential thing, remains intact. With reference to the fishery on the Grand Banks, which is infinitely more productive and, consequently, more sought after, this is facilitated by the right which is henceforth guaranteed to us to purchase bait along the entire extent of the French shore. It is precisely this deep sea fishery which the Government has always sought to encourage as one of the most useful schools for our seamen and a valuable preparation for naval training.

The lobster having become increasingly rare by consequence of the intensive fishery of which for some years it has been the object, it was agreed that general regulations might be enacted with a view to prohibiting the fishing of this crustacean or even of other fish during a definite time. These regulations will be communicated to us at least three months before coming into force. For the purpose of fostering the propagation of the species, it was stipulated that permanent fishing gear could not be used without the permission of the local authorities. But in order to avoid all contest in this respect, we have asked the British Government to inform us as to what they understood exactly by permanent gear. It results from an exchange of notes between our Ambassador and the Principal Secretary of State that, according to British legislation, these words apply only to permanent establishments. Thus our fishermen will be able to continue to use nets attached to the shore for the duration of a fishery, and which constitute only a transitory method. Nothing, likewise, prevents them from installing lobster traps and the right of taking this crustacean, which had heretofore been denied to us and had given rise to long debates, is now definitely admitted in law as in practice.

Besides the fishing properly so called, we also have other interests on the French shore which had to be taken into consideration, that is, those of the owners of drying sheds and lobster establishments who find themselves dispossessed by reason of the exploitation of the coast heretofore reserved exclusively to their industry. Article 3 of the Convention of the 8th April assures to the proprietors of these establishments, as well as to the sailors employed by them, an indemnity the amount of which is to be determined by a commission of officers from the French and English navy, with eventual recourse to an umpire whose choice will lie with the International Court at The Hague. Every guaranty is consequently foreseen for the equitable compensation of the various enterprises involved.

It will thus be seen that to remove the risk of conflict which threatened to become a disturbing element, we are only abandoning in Newfoundland privileges defensible with difficulty and not at all necessary, while preserving the essential right, that is, fishing in territorial waters, and removing for the future from the field of possible conflict a valuable right—that of fishing freely or unhindered purchasing bait along the entire French shore.

These compensations are not, moreover, the only ones to which we secured consent. . . . [Livre Jaune, 1904, Accords conclus, le 8 avril, 1904, entre la France et l'Angleterre au sujet du Maroc, de l'Égypte, de Terre-Neuve, etc., pp. 7-10.]

Correspondence between the Agents of the United States and Great Britain with the Permanent Court of Arbitration.

No. 1.—*To the President and Members of the Tribunal in the North Atlantic Coast Fisheries Arbitration.*

AUGUST 13, 1910.

GENTLEMEN: Acting on behalf of the United States, pursuant to article 62 of The Hague Convention for the specific settlement of international disputes, I have the honor to call to your attention a question of importance, upon which it is necessary that the views of my Government be made known to the Tribunal.

I had expected that an opportunity would be afforded me, as the agent of the United States, to inform the Tribunal whether or not I had any further communication to make on behalf of my Government to the Tribunal before the adjournment on Friday last. It appears, however, from the closing remarks of the President, that it is expected that the agents will remain in communication with the Tribunal in connection with its further proceedings, and the closing of the oral argument on the seven questions specified in the special agreement of the 27th January, 1909, does not concern the matter to which I now refer.

In any event, it is necessary, under the circumstances, that on behalf of my Government a formal record be made by means of this communication of its position in regard to the further proceedings to be taken with reference to the special questions raised by the answer of Great Britain in regard to the objections stated by the United States to specific provisions of certain legislative and executive acts of Newfoundland and Canada called to the attention of the Tribunal by the United States for action pursuant to articles 2 and 3 of the special agreement of the 27th January, 1909.

At the session of 19th July last, as recorded in protocol 26 of the proceedings, the Tribunal announced, referring to the provisions of article 2 of the special agreement of the 27th January, 1909, that, "it believes that it would facilitate its work and expedite the final disposition of this Case if the parties supply the Tribunal with a detailed statement of the particular provisions of the statutes and regulations to which they object, accompanied by an exposition of the grounds for such objection."

In making this announcement it apparently was assumed by the Tribunal that the United States had already called to the attention of the Tribunal certain legislative and executive acts, and had already asked the Tribunal to point out in what respects, if any, they were inconsistent with the true interpretation of the treaty. Up to

that time, however, the proceedings taken by the United States under article 2 of the treaty had not gone beyond the point of specifying to the opposite Party certain legislative and executive acts, which under article 2 was required to be done within three months of the exchange of notes enforcing the special agreement, in order that the acts so specified might subsequently, if the United States so desired, be called to the attention of the Tribunal for further action, as provided for in article 2.

Nevertheless, as the United States intended to do what the Tribunal supposed to have been already done, viz., to call the attention of the Tribunal to certain acts of the other Party which had been specified within three months of the exchange of notes enforcing the agreement, it was not deemed important to take note of the misapprehension on the part of the Tribunal, and the United States proceeded on the 26th of July to call the attention of the Tribunal to certain acts, pursuant to article 2 of the special agreement; and, further, in compliance with the suggestion of the Tribunal already referred to, in order to facilitate its work and expedite the final disposition of the Case, the United States supplied the Tribunal with a detailed statement thereof, accompanied by an exposition of the grounds of its objections thereto.

By reference to this statement it will appear that the grounds assigned by the United States for objecting to the specific regulations referred to were set forth as follows:—

"I. Pursuant to the provisions of Article II of the Special Agreement of January 27, 1909, the United States calls the attention of the Tribunal to certain provisions of the acts specified in the note of June 2, 1909, from the Secretary of State of the United States to the British Ambassador at Washington" (United States Counter-Case Appendix, p. 5), "which provisions are claimed by the United States to be inconsistent with the true interpretation of the Treaty of 1818, if applied to American fishermen on the treaty coasts, because even under the contention of Great Britain, as set out in Question One, they are not:

"(a.) Appropriate or necessary for the protection and preservation of such fisheries and the exercise of the rights of British subjects therein and of the liberty which by the said Article I the inhabitants of the United States have therein in common with British subjects;

"(b.) Desirable on grounds of public order and morals;

"(c.) Equitable and fair as between local fishermen and the inhabitants of the United States exercising the said treaty liberty and not so framed as to give unfairly an advantage to the former over the latter class,

"and also because under the contention of the United States as set out in such Question they are not:

1428 "(a.) Appropriate and necessary for the protection and preservation of the common rights in such fisheries and the exercise thereof; and

"(b.) Reasonable in themselves and fair as between local fishermen and fishermen coming from the United States, and so framed as not to give an advantage to the former over the latter class.

"The specific provisions herein called to the attention of the Tribunal are set out in the First and Second Schedules hereto annexed."

The second and third paragraphs of the statement submitted by the United States were as follows:—

"II. Pursuant to Article II of the Special Agreement of January 27, 1909, the United States calls upon the Tribunal to express in its award its opinion upon the aforesaid provisions so specified and called to its attention, and to point out in what respects they are inconsistent with the principles laid down in the award in reply to Question One."

"III. If the award of the Tribunal be in favor of the British contention as stated in Question One, the United States will ask that the Tribunal refer to a

Commission of expert specialists for a report thereon, in accordance with Article III of the Special Agreement aforesaid, such of the specific provisions set forth in the First and Second Schedules as require an examination of the practical effect thereof in relation to the conditions surrounding the exercise of the liberty of fishery or require expert information about the fisheries themselves, for the determination of their appropriateness, necessity, reasonableness, and fairness as defined in Question One."

In connection with paragraph 3, it will be noted that article 2 of the special agreement contemplates that the award on Question One shall be determined upon before the Tribunal can express its opinion upon the acts specified, and point out in what respects, if any, they are inconsistent with the principles laid down in the award.

So also, article 3 of the special agreement contemplates that the award on Question One shall precede the decision of the Tribunal in regard to the acts specified, for it provides with reference to the function to be performed by the Commission of experts to be appointed, that "Pending the report of the Commission upon the question or questions so referred, and without awaiting such report, the Tribunal may make a separate award upon all or any other questions before it, and such separate award, if made, shall become immediately effective, provided that the report aforesaid shall not be incorporated in the award until it has been considered by the Tribunal."

Thereafter, at the session of the 2nd August, Great Britain presented to the Tribunal its answer to the statement of the United States above referred to.

The answer thus presented contained four distinct propositions:

1. An assertion, in effect, that the grounds of objection contained in the statement of the United States were not sufficient. (This was based on an erroneous and misleading allegation as to the scope and application of the statement at the end of paragraph 4 of the paper submitted by the United States.)

2. The contention that in the absence of specific grounds of objection, the regulations referred to must be taken to be reasonable.

3. The submission by Great Britain that the regulations are in fact reasonable, and asking for an award to that effect.

4. An averment that no ground has been laid for the request that some of the provisions should be referred to a Commission of expert specialists.

The United States supposed that its specification of the objections that the particular provisions of the acts to which it called attention were not appropriate or necessary for the protection and preservation of the fisheries, &c.; that they were not desirable on the grounds of public order and morals; that they were not equitable and fair as between local fishermen and the inhabitants of the United States, and that they were so framed as to give an advantage to the former over the latter class and to give such an advantage unfairly, was a full compliance with the request of the Tribunal made on the 19th July.

The United States conceived and now understands that the averment in the answer of Great Britain that the said provisions of the acts are reasonable, *raised a special issue upon which nothing remains to be done except the production of proof regarding matters of fact and such argument as may be appropriate regarding the effect of the proofs thus adduced.*

If, however, the Tribunal should be of the opinion that the specification of grounds of objection thus made by the United States is not sufficient to fairly advise the Tribunal of the grounds of objections, the United States *will expect to be advised of the opinion of the Tribunal in that regard, and as a matter of course to have an opportunity to make the statement of grounds more specific*, in accordance with the opinion of the Tribunal.

In respect of the production of proof, the United States understands—

1. That the production thereof or argument thereupon, *in addition* to such proof and argument as have already been had as incident to the presentation and discussion of the seven main questions submitted, would be premature before the award, which, as the special agreement plainly contemplates, may render any decision of the question of reasonableness, &c., unnecessary, and which *must lay down the principles which are to guide the production and application of proof.*

2. That the special agreement of the 27th January, 1909, 1429 *contemplates under the terms of articles 2 and 3 that additional proof upon questions of reasonableness, &c., is to be furnished by means of a special Commission of experts, with reference to the report whereof special provisions are made.*

The United States has understood that the Tribunal had *already determined* to appoint a Commission of experts in case the nature of the award is such as to require a consideration of the questions of reasonableness, fairness, necessity, &c. That the United States has been justified in this understanding appears by Protocol No. XXXVI of the proceedings of the 5th August, whereby it is recorded that, in response to the request of the Tribunal to the agent and counsel of the respective parties, the United States on that date designated Mr. Hugh M. Smith to act as a member of the Commission, as provided by article 3 of the special agreement, which designation was received without any intimation that the understanding of the United States evinced thereby was erroneous. The discussion proceeded thereafter, and was declared to be closed on the 12th August, without any intimation that the understanding of the United States was not correct.

The United States accordingly now understands that in case the award of the Tribunal shall be such as to call for any decision upon questions regarding the appropriateness, reasonableness, necessity or fairness of any statute or regulation, such questions *will be considered as questions of fact to be determined upon proof furnished by the report of expert specialists*, having reference to the grounds of objection which the United States has already presented, or to *further specifications* in case the Tribunal shall deem further specifications to be appropriate.

In the foregoing statements the United States does not wish to be understood as in any manner conceding that Great Britain does *not rest under the burden of alleging and proving* affirmatively that there are sufficient grounds which make it reasonable and necessary to impose particular limitations and restrictions upon the exercise in the treaty waters of the liberty granted to the United States by the treaty of 1818.

This letter will preclude any misunderstanding which might possibly result from the fact that there have been a number of informal conversations *in camera* between the Tribunal and the agents and counsel of the respective parties, having some reference to this subject, no official record of which has been made.

A copy of this letter has been communicated to the agent for Great Britain.

I have &c.

(Signed) CHANDLER P. ANDERSON,
*Agent of the United States in the North
Atlantic Coast Fisheries Arbitration.*

No. 2.—*The North Atlantic Coast Fisheries Arbitration.*

On behalf of Great Britain the following memorandum is submitted in respect of the paper dated the 13th August, 1910, signed by the agent for the United States, and addressed to the President and members of the Tribunal.

The ostensible purpose of the paper in question appears to be to present an argument on behalf of the United States in favour of the sufficiency of the so-called "exposition," contained in the "particulars" of the 26th July, 1910, of the grounds upon which the United States objects to certain statutes and regulations, and an argumentative criticism of Great Britain's answer to the same "particulars," and to repeat the premature demand of the United States for the constitution of a special Commission of experts—the occasion for whose appointment and the nature of whose functions under the special agreement of the 27th January, 1909, the paper in question, it is respectfully submitted, wholly misconceives.

The real purpose of the paper, however, would appear to be to place upon record a construction by the United States of the rulings and directions of the Tribunal, and a statement of the United States view of the effect of those rulings and directions upon the future proceedings of the Tribunal.

Great Britain wholly dissents from that construction of the Tribunal's rulings, and disputes the effect attributed to them by the paper in question.

As agent for Great Britain, the undersigned, emphatically protests against the time and method selected by the agent of the United States for bringing before the Tribunal the matters discussed in the paper. The Tribunal has risen for deliberation; counsel have separated and are not available to the undersigned for consultation. The written pleadings of both parties in respect of the objections to be made by the United States to the statutes and regulations of which it complains have taken the course directed by the Tribunal, and have been closed. If the objections have been sufficiently stated, nothing remains to be done at the present stage. If not, the United States should apply for leave to alter or supplement its "exposition," and upon any such application opportunity could be afforded to the parties to be heard.

While so protesting the undersigned respectfully submits to the Tribunal, that, until the questions stated in the special agreement have been answered, it is inexpedient to discuss or even to raise the matters which the paper of the 13th August seeks to present.

Should the first question be answered in the sense of Great Britain's contention, attention may then be appropriately invited to the objections suggested by the United States to existing 1430 fishery regulations, and consideration can then be given to the question of the sufficiency of the "exposition" already made, of the grounds upon which such objections are based.

Should the Tribunal deem the "exposition" sufficient, or should it permit the "exposition" to be amended or supplemented all necessary directions will then no doubt be given to govern the course of future proceedings by way of proofs and argument in respect of such objections.

It may well be that when this stage has been reached the Tribunal will not find itself in need of any expert assistance.

In any event nothing could be further from the intention of the special agreement than that any Commission of experts should be invested generally with the powers of the Tribunal itself, as the paper in effect proposes. The 3rd article of the special agreement is explicit as to this. It is only in case a question develops regarding the reasonableness of any regulation, which *requires* an examination of the practical effect of any provision, or expert information about the fisheries, that anything whatever is to be referred to such a Commission. Such a question as the 3rd article describes may or may not arise; if and when the objections of the United States come to be considered. Until it does, and until the Tribunal itself finds the appointment of such a Commission requisite, and in its judgment expedient for its own assistance, it is idle for one of the parties to be demanding such appointment.

It must be obvious that the questions, if any, upon which the Tribunal may require assistance should be ascertained and formulated for reference before the men to compose such a Commission can be intelligently chosen. It is equally obvious that the special agreement does not contemplate a general reference *en bloc* to any such Commission of any and all objections which the United States may think it well to put forward.

On behalf of Great Britain, the undersigned desires it to be understood that, in his submission, the paper in question has no justification in fact for any alleged possibility of "misunderstanding," arising from or out of what are described as "informal conversations *in camera*." It is, in the submission of the undersigned, a mistake to use at all the word "informal" in this connection, and upon the facts of what has taken place there can be no room to apprehend any such "misunderstanding."

A. B. AYLESWORTH,
Agent for Great Britain.

AUGUST 19, 1910.

No. 3.—*North Atlantic Coast Fisheries Arbitration.*

HON. CHANDLER P. ANDERSON,
*Agent for the United States in the
 North Atlantic Coast Fisheries Arbitration.*

THE HAGUE, August 20, 1910.

SIR, Your letter of the 13th August, 1910, addressed to the President and members of this Tribunal, has been received and duly considered. After consultation with my colleagues, and on their behalf, I have the honor to make some remarks concerning your letter above mentioned. We regret to learn that you expected an opportunity would be afforded to you on the 12th August to make a further communication to the Tribunal; an opportunity which would have been cheerfully accorded had we been informed of such expectation. The order of procedure in this arbitration was proposed by the agents and counsel of both parties, and was accepted by the Tribunal as it had been proposed. Nothing was said as to further communications from the agents. I could so much the less expect that you would desire to make such communications on Friday last, as Mr. Root had already addressed the Court and he had made the communication concerning the nomination of an expert on behalf of the United States, a communication which I assumed to have been made in your name.

It seems to the Tribunal that some answer and explanation should be made in regard to certain other matters contained in your letter. You say:—

“At the session of the 19th July last, as recorded in Protocol XXVI of the proceedings, the Tribunal announced, referring to the provisions of Article II of the special agreement of the 27th January, 1909, that ‘it believes that it would facilitate its work and expedite the final disposition of this case if the parties supply the Tribunal with a detailed statement of the particular provisions of the statutes and regulations to which they object, accompanied by an exposition of the grounds for such objection.’”

And that you thought that:—

“In making this announcement it apparently was assumed by the Tribunal that the United States had already called to the attention of the Tribunal certain legislative and executive acts and had already asked the Tribunal to point out in what respects, if any, they were inconsistent with the true interpretation of the treaty. Up to that time, however, the proceedings taken by the United States under Article II of the treaty had not gone beyond the point of specifying to the opposite party certain legislative and executive acts, which under Article II was required to be done within three months of the exchange of notes enforcing the special agreement, in order that the acts so specified might subsequently, if the United States so desired, be called to the attention of the Tribunal for further action, as provided for in Article II.”

1431 It is true that the assumption above referred to was made by the Tribunal, and, as they think, upon sufficient grounds. In June 1909 the Secretary of State of the United States, in compliance with article 2 of the special agreement, transmitted to Great Britain through its Ambassador at Washington a list of the “legislative and executive acts of Canada and Newfoundland, which are specified on the part of the United States in compliance with the requirement of the above article that the legislative and executive acts referred to therein must be specified within three months of the exchange of notes enforcing the special agreement.”

This letter and the accompanying list are printed in the Appendix to the Counter-Case of the United States. This list of acts afterwards became the subject of correspondence between yourself, as agent for the United States, and Mr. Aylesworth, the agent for Great Britain, under dates of the 6th August, 1909, 22nd October, 1909, and 26th October, 1909. In your letter of the 22nd October, 1909, to Mr. Aylesworth, you say:—

“I have the honour to inform you that if it becomes necessary to bring up for discussion the acts specified on the part of the United States, it is not anticipated that there will be occasion to go beyond the particular sections or clauses thereof, which are printed in the Appendix to the Case of the United States, delivered on October 4 last, pursuant to the provisions of Article VI of the Special Agreement referred to.”

In the opening argument of counsel for Great Britain on the 14th June, reference was made to article 2 of the special agreement and to the fact that, “in accordance with that article, a list had been handed in”; and p. 5 of the Appendix to the Case of Great Britain was referred to for a list of the Acts objected to by the United States. This list corresponds exactly with the list published in the Appendix to the Counter-Case of the United States above mentioned.

After this statement, and a reference to the correspondence between the Secretary of State for the United States and the British Ambassador, counsel for Great Britain, Sir Robert Finlay, made the following statements:—

“So that the consent which is of course necessary for international arbitration has been given in so far as all cases up to date are concerned.”

And after quoting article 4 of the special agreement, he proceeds as follows:—

“So that, most fortunately, we have the most complete provision contained in this treaty, first, for dealing with any acts which already have been passed, and which are complained of, and secondly, for legislating in future in accordance with the principles to be laid down by this Tribunal. The award of the Tribunal on this occasion will be a very worthy one, for it will not only solve the differences which have already occurred, but will provide the principles and a method of procedure for disposing of any question which may arise in the future with regard to the application of those principles to any particular enactment.”

As to these statements, no objection or criticism was made by counsel for the United States. Afterwards, as will appear by Protocol XXXVI of the 5th August, a request was made by the Tribunal of the agents and counsel for the respective parties for the designation by each of them of a member of the commission of expert specialists under the provisions of article 3 of the special agreement. By Protocol XXVI of the 19th July, to which you refer, it is said:—

In pursuance of the provisions of Article II of the Special Agreement of the 27th of January, 1909, both parties have called the attention of the Tribunal to different legislative and executive acts of the other party for the purpose of asking the Tribunal to point out in what respects, if any, they are inconsistent with the true interpretation of the treaty.”

And in your letter you say:—

“Nevertheless, as the United States intended to do what the Tribunal supposed to have been already done, viz., to call the attention of the Tribunal to certain acts of the other party which had been specified within three months of the exchange of notes enforcing the agreement, it was not deemed important to take note of the misapprehension on the part of the Tribunal.”

It will appear, therefore, from the record that the Tribunal were quite justified in assuming that the question as to the reasonableness of the acts specified in the list above referred to had been duly raised, and that in the opinion of the Tribunal they required the assistance of a commission of expert specialists in order to intelligently determine the same.

As above appears, this request for the assistance of an expert commission was made as early as the 20th June, and it is a source of embarrassment, and much to be regretted, that the designation of such an expert on one side was delayed until the 5th August, and on the other not made at all, as it was hoped by the Tribunal that with the assistance of such a commission their judgment upon the reasonableness of the acts and regulations referred to might, if their award should so require it, be embodied therein.

In the opinion of the Tribunal it would have been clearly competent for it to have embodied such a judgment in its award, should the award itself have made it necessary to render such judgment. It

is true article 3 contemplates, as you say, the making of an award independently of the report of the experts, and if such award calls for any decision upon the reasonableness of any statutory regulation, the same may be referred as questions of fact to such commission as is provided for in article 3, in accordance with your suggestion.

If the character of the award should render it necessary, the Tribunal have much satisfaction in the opportunity, to which allusion was made in my closing remarks, of calling upon the agents of both parties for their further assistance.

A copy of this letter will be forwarded to the agent for Great Britain.

I have, &c.

LAMMASCH.

AGREEMENT OF JULY 20, 1912.

Mr. Anderson to the Secretary of State.

AUGUST 3, 1912.

SIR: As an appendix to my report of November 14, 1910, as Agent of the United States in the North Atlantic Coast Fisheries Arbitration held at The Hague in 1910, I have the honor to inclose a copy of an agreement entered into on July 20 last between the United States and Great Britain adopting with certain modifications the recommendations of the Fisheries Arbitration Tribunal in its award with reference to Questions I and V, which recommendations were incorporated in the award pursuant to the provisions of Article IV of the Special Agreement under which the arbitration was held, requiring that—

The Tribunal shall recommend for the consideration of the High Contracting Parties rules and a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties above referred to may be determined in accordance with the principles laid down in the award.

I am, sir, very respectfully, your obedient servant,

CHANDLER P. ANDERSON.

The SECRETARY OF STATE,
Washington, D. C.

Agreement of July 20, 1912, between the United States and Great Britain.

The United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of concluding an agreement regarding the exercise of the liberties referred to in Article I of the Treaty of October 20, 1818, have for this purpose named as their Plenipotentiaries:

The President of the United States of America: Chandler P. Anderson, Counselor for the Department of State of the United States;

His Britannic Majesty: Alfred Mitchell Innes, Chargé d'Affaires of His Majesty's Embassy at Washington;

Who, having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following articles:

ARTICLE I.

Whereas the award of the Hague Tribunal of September 7, 1910, recommended for the consideration of the Parties certain rules and

a method of procedure under which all questions which may arise in the future regarding the exercise of the liberties referred to in Article I of the Treaty of October 20, 1818, may be determined in accordance with the principles laid down in the award, and the Parties having agreed to make certain modifications therein, the rules and method of procedure so modified are hereby accepted by the Parties in the following form:

1. All future municipal laws, ordinances, or rules for the regulation of the fisheries by Great Britain, Canada, or Newfoundland in respect of (1) the hours, days, or seasons when fish may be taken on the treaty coasts; (2) the method, means, and implements used in the taking of fish or in carrying on fishing operations; (3) any other regulations of a similar character; and all alterations or amendments of such laws, ordinances, or rules shall be promulgated and come into operation within the first fifteen days of November in each year; provided, however, in so far as any such law, ordinance, or rule shall apply to a fishery conducted between the 1st day of November and the 1st day of February, the same shall be promulgated at least six months before the 1st day of November in each year.

Such laws, ordinances, or rules by Great Britain shall be promulgated by publication in the London Gazette, by Canada in the Canada Gazette, and by Newfoundland in the Newfoundland Gazette.

After the expiration of ten years from the date of this Agreement, and so on at intervals of ten years thereafter, either Party may propose to the other that the dates fixed for promulgation be revised in consequence of the varying conditions due to changes in the habits of the fish or other natural causes; and if there shall be a difference of opinion as to whether the conditions have so varied as to render a revision desirable, such difference shall be referred for decision to a commission possessing expert knowledge, such as the Permanent Mixed Fishery Commission hereinafter mentioned.

2. If the Government of the United States considers any such laws or regulations inconsistent with the Treaty of 1818, it is entitled so to notify the Government of Great Britain within forty-five days after the publication above referred to, and may require that the same be submitted to and their reasonableness, within the meaning of the award, be determined by the Permanent Mixed Fishery Commission constituted as hereinafter provided.

3. Any law or regulation not so notified within the said period of forty-five days, or which, having been so notified, has been declared reasonable and consistent with the Treaty of 1818 (as interpreted by the said award) by the Permanent Mixed Fishery Commission, shall be held to be reasonable within the meaning of the award; but if declared by the said Commission to be unreasonable and inconsistent with the Treaty of 1818, it shall not be applicable to the inhabitants of the United States exercising their fishing liberties under the Treaty of 1818.

4. Permanent Mixed Fishery Commissions for Canada and Newfoundland, respectively, shall be established for the decision of such questions as to the reasonableness of future regulations, as contemplated by Article IV of the Special Agreement of January 27, 1909. These Commissions shall consist of an expert national, appointed by each Party for five years; the third member shall not be a national

of either Party. He shall be nominated for five years by agreement of the Parties, or, failing such agreement, within two months from the date, when either of the Parties to this Agreement shall call upon the other to agree upon such third member, he shall be nominated by Her Majesty the Queen of the Netherlands.

5. The two national members shall be summoned by the Government of Great Britain, and shall convene within thirty days from the date of notification by the Government of the United States. These two members having failed to agree on any or all of the questions submitted within thirty days after they have convened, or having before the expiration of that period notified the Government of Great Britain that they are unable to agree, the full Commission, under the presidency of the Umpire, is to be summoned by the Government of Great Britain, and shall convene within thirty days thereafter to decide all questions upon which the two national members had disagreed. The Commission must deliver its decision, if the two Governments do not agree otherwise, within forty-five days after it has convened. The Umpire shall conduct the procedure in accordance with that provided in Chapter IV of the Convention for the Pacific Settlement of International Disputes, of October 18, 1907, except in so far as herein otherwise provided.

6. The form of convocation of the Commission, including the terms of reference of the question at issue, shall be as follows:

"The provision hereinafter fully set forth of an act dated _____, published in the _____ Gazette, has been notified to the Government of Great Britain by the Government of the United States under date of _____, as provided by the agreement entered into on July 20, 1912, pursuant to the award of the Hague Tribunal of September 7, 1910.

"Pursuant to the provisions of that Agreement the Government of Great Britain hereby summons the Permanent Mixed Fishery Commission for (Canada) composed of _____ Commissioner for the United States of America, and of _____ Commissioner for (Canada) who shall meet at Halifax, Nova Scotia, with power to hold subsequent meetings at such other place or places as they may determine, and render a decision within thirty days as to whether the provision so notified is reasonable and consistent with the Treaty of 1818, as interpreted by the award of the Hague Tribunal of September 7, 1910, and if not, in what respect it is unreasonable and inconsistent therewith.

"Failing an agreement on this question within thirty days, the Commission shall so notify the Government of Great Britain in order that the further action required by that award shall be taken for the decision of the above question.

"The provision is as follows _____."

7. The unanimous decision of the two national Commissioners, or the majority decision of the Umpire and one Commissioner, shall be final and binding.

8. Any difference in regard to the regulations specified in Protocol XXX of the arbitration proceedings, which shall not have been disposed of by diplomatic methods, shall be referred not to the Commission of expert specialists mentioned in the award but to the Per-

manent Mixed Fishery Commissions, to be constituted as hereinbefore provided, in the same manner as a difference in regard to future regulations would be so referred.

ARTICLE II.

And whereas the Tribunal of Arbitration in its award decided that—

In case of bays the 3 marine miles are to be measured from a straight line drawn across the body of water at the place where it ceases to have the configuration and characteristics of a bay. At all other places the 3 marine miles are to be measured following the sinuosities of the coast.

And whereas the Tribunal made certain recommendations for the determination of the limits of the bays enumerated in the award;

Now, therefore, it is agreed that the recommendations, in so far as the same relate to bays contiguous to the territory of the Dominion of Canada, to which Question V of the Special Agreement is applicable, are hereby adopted, to wit:

In every bay not hereinafter specifically provided for, the limits of exclusion shall be drawn three miles seaward from a straight line across the bay in the part nearest the entrance at the first point where the width does not exceed ten miles.

For the Baie des Chaleurs the limits of exclusion shall be drawn from the line from the Light at Birch Point on Miscou Island to Macquereau Point Light; for the bay of Miramichi, the line from the Light at Point Escuminac to the Light on the eastern point of Tabisintac Gully; for Egmont Bay, in Prince Edward Island, the line from the Light at Cape Egmont to the Light at West Point; and off St. Ann's Bay, in the Province of Nova Scotia, the line from the Light at Point Anconi to the nearest point on the opposite shore of the mainland.

For or near the following bays the limits of exclusion shall be three marine miles seawards from the following lines, namely:

For or near Barrington Bay, in Nova Scotia, the line from the Light on Stoddard Island to the Light on the south point of Cape Sable, thence to the Light at Baccaro Point; at Chedabucto and St. Peter's Bays, the line from Cranberry Island Light to Green Island Light, thence to Point Rouge; for Mira Bay, the line from the Light on the east point of Scatary Island to the northeasterly point of Cape Morien.

Long Island and Bryer Island, on St. Mary's Bay, in Nova Scotia, shall, for the purpose of delimitation, be taken as the coasts of such bays.

It is understood that the award does not cover Hudson Bay.

ARTICLE III.

It is further agreed that the delimitation of all or any of the bays on the coast of Newfoundland, whether mentioned in the recommendations or not, does not require consideration at present.

ARTICLE IV.

The present Agreement shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty, and the ratifications shall be exchanged in Washington as soon as practicable.

In faith whereof the respective Plenipotentiaries have signed this Agreement in duplicate and have hereunto affixed their seals.

Done at Washington on the 20th day of July, one thousand nine hundred and twelve.

CHANDLER P. ANDERSON.

ALFRED MITCHELL INNES.

INDEX TO ORAL ARGUMENTS.

INDEX TO ORAL ARGUMENTS.*

EXPLANATORY NOTE.—Abbreviations used: *U. S. C.*, United States Case; *U. S. C. Ap.*, United States Case Appendix; *U. S. C. C.*, United States Counter-Case; *U. S. C. C. Ap.*, United States Counter-Case Appendix; *U. S. A.*, United States Argument (printed); and similar abbreviations in the case of the British pleadings, using “*B.*” instead of “*U. S.*,” as, *B. C. Ap.*, etc. The abbreviation *O. A. Ap.* refers to the appendices to the oral argument which are printed in the first part of this volume.

In indexing a reference to a document, or statement in any of the above volumes, the page reference is given in italics, as *B. C. Ap. 59*, followed by the page reference in Roman to the oral argument where the documents mentioned are discussed.

All page references whether italicised or in Roman refer to the paging of the present publication with the exception of references to the *B. C. Ap.*, *B. C. C. Ap.*, and *B. A.*, which are given as in the original print; this original paging appears inset in the margin of this publication. This variation was made because the page references used by the speakers themselves in the oral argument refer to the documents then before them, i. e., the original print, which, in the case of the British documents, did not bear the same page numbers as are given them in this publication.

In indexing references to treaties, where the names of the contracting nations are not given it is to be understood that they were Great Britain and the United States.

Where a reference is made in general terms to “the treaty,” it is to be understood that the treaty of 1818 between the United States and Great Britain is referred to.

The word “American” has been frequently substituted for the words “United States” when used as an adjective.

Where questions were asked or remarks made by members of the tribunal, this is indicated by inserting in the reference to the topic under discussion the name of the arbitrator in conspicuous type, thus—**LAMMASCH**.

References to international law writers give the name of the author, followed by a reference in italics to his work, the subject discussed, and page reference to the oral argument where the author is referred to.

References to Fiore are given to two of his works indicated by *C.* (*Le Droit International Codifié*), and *T.* (*Nouveau Droit International Public*); and likewise to two works of Calvo, indicated by *D.* (*Dictionnaire de Droit International*), and *T.* (*Le Droit International*).

Elder, Honorable Samuel J.

General remarks, pp. 1444–1505. (July 19, 21, 1910.)

Adee to Durand, July 25, 1905, *U. S. C. C. Ap.*, 205, Capt. Alexander’s instructions, **FITZPATRICK**, 1500, 1524.

Alaskan Boundary Arbitration: Position of United States re maritime jurisdiction, 1500–5. Taylor, *Proceedings VII: 611*, political coast line a legal creation, 1502–3.

* Compiled by W. Clayton Carpenter, Washington, D. C., formerly connected with the Department of State.

Elder, Honorable Samuel J.—Continued.*General remarks—Continued.*

Alexander, Capt.: Instructions to: FITZPATRICK, 1500; Adee to Durand, July 25, 1905, *U. S. C. C. Ap.*, 205, 1524. Mission of, LAMMASCH, 1499. Work of: Reid to Grey, July 23, 1908, *U. S. C. C. Ap.*, 50, 1496-7; shows value of joint enforcement of regulations, 1497, 1499-1500.

Aliens can not be employed by Americans to fish, Grey to Reid, June 20, 1907, *U. S. C. C. Ap.*, 1004, 1487-8.

American fishermen forbidden to fish on shores of Bonne Bay and Port Amherst, 1449.

American fishery must be vessel fishery, 1498.

American registry, requirements of, 1461.

Americans actually fished on treaty coast since 1818, not disputed, 1460.

Amherst, Port, American fishermen forbidden to fish on shores of, 1449.

Anstruther's reports: Nov. 5, 1906, *U. S. C. C. Ap.*, 362, employment of Newfoundlanders by Americans, 1475-6. Dec. 10, 1906, *U. S. C. C. Ap.*, 371-2, Newfoundland satisfied with practice of selling herring to United States, 1478; Newfoundlanders prefer to work for or with Americans, 1479.

Bait: Act of 1887 not intended to interfere with sale of herring as article of consumption, Winter in "Morning Post," Sept. 11, 1907, *U. S. C. C. Ap.*, 404, 1451. Americans have no right to buy, Bond, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 417, 1456-7. Fish, license for sale of, Newfoundland statute, 1887, *B. C. Ap.*, 711, 1450. On Magdalen Islands, FITZPATRICK, 1467. Policy condemned, Bond's: fishermen's meeting, Bay of Islands, Mar. 27, 1907, *U. S. C. C. Ap.*, 384-5, 1463, 1484-5; fishermen's meeting, Bonne Bay, Apr. 12, 1907, *U. S. C. C. Ap.*, 390, 1485. Prohibition of sale of, injures Newfoundlanders, petition of fishermen, Ferryland district, Feb. 26, 1907, *U. S. C. C. Ap.*, 380, 1482-3. Refusal to sell, intended to force removal of American duties on fish, Bond, speech, Feb. 12, 1907, *U. S. C. C. Ap.*, 467, 1480. Right to buy, when denied or allowed, GRAY, 1466, 1470, 1472. Right to take, of vital importance to Americans, 1467.

Bay: Bonne, American fishermen forbidden to fish on shore of, 1449; fishermen's meeting, Apr. 12, 1907, *U. S. C. C. Ap.*, 390, 1485. Of Islands, fishermen's meeting, Mar. 27, 1907, *U. S. C. C. Ap.*, 384-5, Bond's bait policy condemned, 1463, 1484-5.

Bayard-Chamberlain treaty, delimited bays only on nontreaty coast, 1452.

"Bayard, the Thomas F.," case of, 1449.

Bays: On nontreaty coast, Chamberlain-Bayard treaty delimited only, 1452.

On west coast of Newfoundland, question as to, had not arisen in 1888, 1452.

Blaine-Bond treaty of 1891: Abortive through interference of Canada, 1454.

Did not provide for shipment of crews, 1455.

Bond, Sir Robert: At Colonial Conference, May 14, 1907, 1486-7. Did not desire arbitration, 1446. Insisted on submission of question 6, 1489-90. Sought reciprocity, Winter in "Morning Post," Sept. 11, 1907, *U. S. C. C. Ap.*, 404, 1450. Speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 417, 1454, 1456-8; herring purchased not caught by Americans, usual light and customs dues charged, 1454; Americans have no right to buy bait, 1456-7. Speech, Feb. 12, 1907, *U. S. C. C. Ap.*, 467, refusal to sell bait intended to force removal of American duties on fish, 1480; *modus vivendi* of 1906 criticized, 1481. Speech, May 14, 1907, *U. S. C. C. Ap.*, 524, nothing to arbitrate, 1446. Speech, July 12, 1907, *U. S. C. C. Ap.*, 471, effect of *modus vivendi* of 1906, 1464.

Bond-Blaine treaty of 1891: Abortive through interference of Canada, 1454.

Did not provide for shipment of crews, 1455.

Elder, Honorable Samuel J.—Continued.

General remarks—Continued.

Bond-Hay treaty; did not provide for shipment of crews, 1455. Provisions summarized, 1456.

Bond's bait policy condemned: Fishermen's meetings: Bay of Islands, Mar. 27, 1907, *U. S. C. C. Ap.*, 384-5, 1463, 1484-5; Bonne Bay, Apr. 12, 1907, *U. S. C. C. Ap.*, 390, 1485.

Bonne Bay: American fishermen forbidden to fish on shore of, 1449. Fishermen's meeting, Apr. 12, 1907, *U. S. C. C. Ap.*, 390, bait policy condemned, 1485.

Canada, jurisdiction of, 1453.

Canadian interference made Bond-Blaine treaty of 1891 abortive, 1454.

Canadian jurisdiction, no questions have arisen in, 1453.

Chamberlain-Bayard treaty, delimited bays only on nontreaty coast, 1452.

Circumstances leading to this arbitration, 1444-5

Coast line, political, a legal creation, Taylor, Alaskan Boundary Arbitration, *Proceedings 7: 611*, 1502-3.

Colonial Conference, Bond at, May 14, 1907, 1486-7.

"Columbia," case of the, *U. S. C. C. Ap.*, 632, 1456.

Crane and Dubois incident: Account in "Daily News," *U. S. C. C. Ap.*, 354-60, 1475; trial, 1485-6. Antecedents of, Elgin to MacGregor, Nov. 9, 1906, *U. S. C. C. Ap.*, 352, 1474-5. Modus vivendi not considered by court in, Winter, Sept. 11, 1907, *U. S. C. C. Ap.*, 406, 1496.

Crews, Bond-Hay and Blaine-Bond treaties did not provide for shipment of, 1455.

Customs and light dues, usual, charged, Bond, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 417, 1454.

Dubois and Crane incident: Account in "Daily News," *U. S. C. C. Ap.*, 354-60, 1475; trial, 1485-6. Antecedents of, Elgin to MacGregor, Nov. 9, 1906, *U. S. C. C. Ap.*, 352, 1474-5. Modus vivendi not considered by court in, Winter, Sept. 11, 1907, *U. S. C. C. Ap.*, 406, 1496.

Dues, usual light and customs, charged, Bond, speech, April 7, 1905, *U. S. C. C. Ap.*, 417, 1454.

Durand, Adee to, July 25, 1905, *U. S. C. C. Ap.*, 205, Capt. Alexander's instructions, FITZPATRICK, 1500, 1524.

Durand, Root to: Oct. 12, 1905, *U. S. C. Ap.*, 964, first notice of Newfoundland foreign fishing vessels act of 1905, 1460. Oct. 19, 1905, *U. S. C. Ap.*, 966, Newfoundland distinguishing between vessels under American license and registry, 1462; right of vessels of American register to fish, 1461; treaty rights, foreign fishing vessels act, 1905, threats of violence, 1463.

Durand to Root: Oct. 19, 1905, *U. S. C. Ap.*, 965, right of American registered vessel to fish, 1461. Oct. 22, 1905, *U. S. C. C. Ap.*, 633, objection to hiring Newfoundlanders, 1462.

Duties on fish, American, refusal to sell bait intended to force removal of, Bond, speech, Feb. 12, 1907, *U. S. C. C. Ap.*, 467, 1480.

Elgin, MacGregor to: Oct. 26, 1906, *U. S. C. C. Ap.*, 347, power of modus vivendi to supersede colonial legislation, 1468-9. Nov. 1, 1906, *U. S. C. C. Ap.*, 349-50, legal proceedings against Newfoundlanders employed by Americans, 1473-4. Nov. 17, 1906, *U. S. C. Ap.*, 1002, modus vivendi of 1906 unnecessary, intention to test validity of, 1476-7. Dec. 29, 1906, *U. S. C. C. Ap.*, 366, hiring Newfoundlanders outside 3-mile limit, 1477-8. Sept. 1, 1907, *U. S. C. Ap.*, 1013, arbitration a condition for 1907 modus vivendi, 1447.

Elder, Honorable Samuel J.—Continued.*General remarks—Continued.*

Elgin to MacGregor: Nov. 9, 1906, *U. S. C. C. Ap.*, 352, antecedents of Crane and Dubois incident, 1474-5; purpose of modus vivendi of 1906, 1469. July 19, 1907, *U. S. C. C. Ap.*, 1008, modus vivendi of 1907, same as of 1906, 1489. Sept. 6, 1907, *U. S. C. C. Ap.*, 1017, submission to arbitration of questions presented by Newfoundland, 1447.

Employment of Newfoundlanders by Americans: Anstruther's report, Nov. 5, 1906, *U. S. C. C. Ap.*, 362, 1475-6. Objection to, Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, 1462. Prohibition against, not regulation of fishery, FITZPATRICK, 1495.

Exportation of fish, prohibition against, not regulation of fishery, FITZPATRICK, 1495.

Ferryland district, petition of fishermen, Feb. 26, 1907, *U. S. C. C. Ap.*, 380, prohibition of sale of bait injures Newfoundlanders, 1482-3.

Fishermen must sell herring to Americans, 1468.

Fishermen, petition of, Ferryland district, Feb. 26, 1907, *U. S. C. C. Ap.*, 380, prohibition of sale of bait injures Newfoundlanders, 1482-3.

Fishermen's meetings: Bay of Islands, resolution against Bond's policies, Mar. 27, 1907, *U. S. C. C. Ap.*, 384-5, 1463, 1484-5. Bonne Bay, Apr. 12, 1907, *U. S. C. C. Ap.*, 390, bait policy condemned, 1485.

Fishermen's protest against modus vivendi, 1906, 1468.

Fishing and trading rights of American registered vessel, 1461.

FITZPATRICK: Bait on Magdalen Islands, 1467. Instructions to Capt. Alexander, 1500; Adee to Durand, July 25, 1905, *U. S. C. C. Ap.*, 205, 1524. Prohibition against exportation of fish and employment of Newfoundlanders not regulations of fishery, 1495.

Foreign fishing vessels act, 1893, Newfoundland, *U. S. C. Ap.*, 184, not enforced against United States, 1455.

Foreign fishing vessels acts, 1893, 1905, directed against French, not enforced against United States, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 977, 1455-6.

Foreign fishing vessels act, 1905, Newfoundland: First notice of, Root to Durand, Oct. 12, 1905, *U. S. C. Ap.*, 964, 1460. Purely retaliatory fiscal legislation, 1445-6. Purpose of, 1459. Not notified to United States, 1460. Threats of violence, Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 1463. Vacated by Order in Council, Sept. 9, 1907, *U. S. C. Ap.*, 117-18, 1491-2.

Foreigners can not be employed by Americans to fish, Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1004, 1487-8.

French, foreign fishing vessels acts, 1893, 1905, directed against, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 977, 1455-6.

GRAY: Right to buy bait, when allowed or denied, 1466, 1470, 1472.

Grey, Reid to, July 23, 1908, *U. S. C. Ap.*, 50, work of Capt. Alexander, 1496-7.

Grey-Root correspondence of 1906-7, 1487-8.

Grey to Reid: Feb. 2, 1906, *U. S. C. Ap.*, 973, 977, foreign fishing vessels acts, 1893 and 1905, directed against French, not enforced against United States, 1455-6; license not required for exercise of right, 1453-4. June 20, 1907, *U. S. C. Ap.*, 1004, Americans can not employ foreigners to fish, 1487-8.

Halifax commission, Canadian contention, *U. S. C. C. Ap.*, 538, fishing rights on Magdalen Islands, value of inshore fisheries, 1471-2.

Elder, Honorable Samuel J.—Continued.*General remarks—Continued.*

- Hay-Bond treaty: Did not provide for shipment of crews, 1455. Provisions summarized, 1456.
- Herring: Fishermen must sell to Americans, 1463. Fishery, west coast, 1454-55. Purchased, not caught, by Americans, Bond, speech, April 7, 1905, *U. S. C. C. Ap.*, 417, 1454. Sale of as article of consumption, bait act of 1887 not intended to interfere with, Winter in "Morning Post," Sept. 11, 1907, *U. S. C. C. Ap.*, 404, 1451. Selling to Americans, Newfoundland satisfied with practice, Anstruther's report, Dec. 10, 1906, *U. S. C. C. Ap.*, 371-2, 1478.
- History of case since 1886, 1449-1500.
- Inshore fisheries, value of, Halifax commission, *U. S. C. C. Ap.*, 538, 1471-2.
- Interpretation of colonial statutory clause saving treaty rights: 1458-9. Morine, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 436, 1458.
- Joint enforcement of regulations, Capt. Alexander's work shows value of, 1497, 1499-1500.
- Jurisdiction: Canadian, no questions have arisen in, 1453. Newfoundland, questions did not arise in until 1905, 1453. Position of United States, Alaskan Boundary Arbitration, 1500-5. Of Canada and Newfoundland indicated, 1453.
- LAMMASCH, mission of Capt. Alexander, 1499.
- Lansing, explanation of chart showing 10-mile bays, 1503.
- License and registry, Newfoundland distinguishing between, Root to Durand, Oct. 19, 1905, *U. S. C. C. Ap.*, 966, 1462.
- License for sale of bait fish, Newfoundland statute, 1887, *B. C. Ap.*, 711, 1450.
- License not required for exercise of right, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 973, 453-4.
- Light and customs dues, usual, charged, Bond, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 417, 1454.
- Light dues, Americans need not pay if British do not, 1488.
- MacGregor, Elgin to: Nov. 9, 1906, *U. S. C. C. Ap.*, 352, antecedents of Crane and Dubois incident, 1474-5; purpose of *modus vivendi* of 1906, 1469. July 19, 1907, *U. S. C. C. Ap.*, 1008, *modus vivendi* of 1907 same as of 1906, 1489. Sept. 6, 1907, *U. S. C. C. Ap.*, 1017, submission to arbitration of questions presented by Newfoundland, 1447.
- MacGregor to Elgin: Oct. 26, 1906, *U. S. C. C. Ap.*, 347, power of *modus vivendi* to supersede colonial legislation, 1468-9. Nov. 1, 1906, *U. S. C. C. Ap.*, 349-50, legal proceedings against Newfoundlanders employed by Americans, 1473-4. Nov. 17, 1906, *U. S. C. C. Ap.*, 1002, *modus vivendi* of 1906 unnecessary, intention to test validity of, 1476-7. Dec. 29, 1906, *U. S. C. C. Ap.*, 366, hiring Newfoundlanders outside 3-mile limit, 1477-8. Sept. 1, 1907, *U. S. C. C. Ap.*, 1013, arbitration a condition for 1907 *modus vivendi*, 1447.
- Magdalen Islands: Bait on, FITZPATRICK, 1467. Fishing rights on, Halifax commission, *U. S. C. C. Ap.*, 538, 1471-2.
- Maritime jurisdiction, position of United States, Alaskan Boundary Arbitration, 1500-5.
- "Mascot," case of the, *U. S. C. Ap.*, 808, 839, 881, 1449, 1472.
- Massachusetts vessels, number of Newfoundlanders employed by, 1457.
- Modus vivendi* of 1888, *U. S. C. Ap.*, 44, still operative in Canada, provisions of, 1452.

Elder, Honorable Samuel J.—Continued.

General remarks—Continued.

Modus vivendi of 1906: Criticized, Bond, speech, Feb. 12, 1907, *U. S. C. C. Ap.*, 467, 1480. Effect of, Bond, speech, July 12, 1907, *U. S. C. C. Ap.*, 471, 1464. Fishermen's protest against, 1468. Not published in Newfoundland, 1468. Purpose of, Elgin to MacGregor, Nov. 9, 1906, *U. S. C. C. Ap.*, 352, 1469. Unnecessary, intention to test validity of, MacGregor to Elgin, Nov. 17, 1906, *U. S. C. C. Ap.*, 1002, 1476-7.

Modus vivendi of 1907: Arbitration a condition for, MacGregor to Elgin, Sept. 1, 1907, *U. S. C. C. Ap.*, 1013, 1447. Same as of 1906, Elgin to MacGregor, July 19, 1907, *U. S. C. C. Ap.*, 1008, 1489.

Modus vivendi not considered by court in Crane-Dubois case, Winter, Sept. 11, 1907, *U. S. C. C. Ap.*, 406, 1496.

Modus vivendi, power of, to supersede colonial legislation, MacGregor to Elgin, Oct. 26, 1906, *U. S. C. C. Ap.*, 347, 1468-9.

Morine, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 436, interpretation of saving clause of Newfoundland statutes, 1458.

"Morning Post," statement of Winter in, Sept. 11, 1907, *U. S. C. C. Ap.*, 404: bait act of 1887 not intended to interfere with sale of herring as article of consumption, 1451; Bond sought reciprocity, 1450; modus vivendi not considered by court in Crane-Dubois case, 1496.

Newfoundland: Foreign fishing vessels acts: 1893, *U. S. C. C. Ap.*, 184, not enforced against United States, 1455; 1905, first notice of, Root to Durand, Oct. 12, 1905, *U. S. C. C. Ap.*, 964, 1460; purely retaliatory fiscal legislation, 1445-6; purpose of, 1459; not notified to United States, 1460; threats of violence, Root to Durand, Oct. 19, 1905, *U. S. C. C. Ap.*, 966, 1463. Jurisdiction of: 1453; question as to, did not arise until 1905, 1453; question as to bays on west coast, had not arisen in 1888, 1452. Questions, submission of, to arbitration, Elgin to MacGregor, Sept. 6, 1907, *U. S. C. C. Ap.*, 1017, 1447. Satisfied with practice of selling herring to United States, Anstruther's report, Dec. 10, 1906, *U. S. C. C. Ap.*, 371-2, 1478. Situation in 1906, quotations from "Western Star," 1465. Situation in 1909, 1497. Statutes: 1887, *B. C. Ap.*, 711, license for sale of bait fish, 1450; 1905, vacated by order in council, Sept. 9, 1907, *U. S. C. C. Ap.*, 117-18, 1491-2; May 10, 1906, *U. S. C. C. Ap.*, 199, more severe than foreign fishing vessels act of 1905, never approved by Imperial Government, 1464, saving clause in, interpretation of, Morine, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 436, 1458. *See also* Statutes cited.

Newfoundland's attitude avowedly coercive, 1494-5.

Newfoundlanders employed by Massachusetts vessels, number of, 1457.

Newfoundlanders employed by Americans, legal proceedings against, MacGregor to Elgin, Nov. 1, 1906, *U. S. C. C. Ap.*, 349-50, 1473-4.

Newfoundlanders, employment of by Americans: Anstruther's report, Nov. 5, 1906, *U. S. C. C. Ap.*, 362, 1475-6. Objection to hiring, Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, 1462. Outside 3-mile limit, MacGregor to Elgin, Dec. 29, 1906, *U. S. C. C. Ap.*, 366, 1477-8.

Newfoundlanders injured by prohibition of sale of bait, petition of fishermen Ferryland district, Feb. 26, 1907, *U. S. C. C. Ap.*, 380, 1482-3.

Newfoundlanders prefer to work for or with Americans, Anstruther's report, Dec. 10, 1906, *U. S. C. C. Ap.*, 371-2, 1479.

Newfoundlanders, prohibition against employment of, not regulation of fishery, FITZPATRICK, 1495.

Nontreaty coast, Chamberlain-Bayard treaty delimited bays only on, 1452.

Elder, Honorable Samuel J.—Continued.*General remarks—Continued.*

- Order in Council, Sept. 9, 1907, *U. S. C. Ap.*, 117-118, vacating Newfoundland statute 1905, 1491-2; Newfoundland's objections to order, overridden by imperial Government, 1493.
- "Owners," rights of, mean rights of "vessels," Root to Reid, June 30, 1906, *U. S. C. Ap.*, 978, 1465.
- Question 6, insistence of Bond thereon, 1489-90.
- "Ralph L. Hall," case of the, 1475.
- Reciprocity, Bond sought, Winter in "Morning Post," Sept. 11, 1907, *U. S. C. C. Ap.*, 404, 1450.
- Register of vessels, American, requirements of, 1461.
- Registered vessel, American: Fishing and trading rights of, 1461. Right to fish, Durand to Root, Oct. 19, 1905, *U. S. C. Ap.*, 965, Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 1461.
- Registry and license, Newfoundland distinguishing between, Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 1462.
- Regulation of fishery, prohibition against exportation of fish and employment of Newfoundlanders are not, FITZPATRICK, 1495.
- Regulations, joint enforcement of, Capt. Alexander's work shows value of, 1497, 1499-1500.
- Reid, Grey to: Feb. 2, 1906, *U. S. C. Ap.*, 977, foreign fishing vessels acts, 1893 and 1905 directed against French, not enforced against United States, 1455-6; license not required for exercise of right, 1453-4. June 20, 1907, *U. S. C. Ap.*, 1004, Americans can not employ foreigners to fish, 1487-8.
- Reid, Root to, June 30, 1906, *U. S. C. Ap.*, 978, rights of "vessels" mean rights of "owners," 1465.
- Reid to Grey, July 23, 1908, *U. S. C. Ap.*, 50, work of Capt. Alexander, 1496-7.
- Relations with Canada and Newfoundland to be discontinued if American vessels interfered with, United States statute, 1887, *U. S. C. Ap.*, 96, 1449.
- Right, license not required for exercise of, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 973, 453-4.
- Root, Durand to: Oct. 19, 1905, *U. S. C. Ap.*, 965, right of vessels of American register to fish, 1461. Oct. 22, 1905, *U. S. C. C. Ap.*, 633, objection to hiring Newfoundlanders, 1462.
- Root-Grey correspondence, 1906-7, 1487-8.
- Root to Durand: Oct. 12, 1905, *U. S. C. Ap.*, 964, first notice of Newfoundland foreign fishing vessels act of 1905, 1460. Oct. 19, 1905, *U. S. C. Ap.*, 966, Newfoundland distinguishing between vessels under American license and registry, 1462; right of vessels of American register to fish, 1461; treaty rights, foreign fishing vessels act, 1905, threats of violence, 1463.
- Root to Reid, June 30, 1906, *U. S. C. Ap.*, 978, rights of "vessels" mean rights of "owners," 1465.
- Saving clause in colonial statutes, interpretation of: 1458-9. Morine, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 436, 1458.
- Statutes cited: *Newfoundland*: 1887, *B. C. Ap.*, 711, license for sale of bait fish, 1450; May 10, 1906, *U. S. C. Ap.*, 199, more severe than foreign fishing vessels act, 1905, not approved by imperial Government, 1464. *United States*, 1887, *U. S. C. Ap.*, 96, to end relations with Canada and Newfoundland if American vessels interfered with, 1449.
- Taylor, Alaskan boundary arbitration, *Proceedings* 7: 611, political coast line a legal creation, 1502-3.
- Ten-mile bays, explanation of chart, Lansing, 1503.

Elder, Honorable Samuel J.—Continued.

General remarks—Continued.

Three-mile limit, hiring Newfoundlanders outside of, MacGregor to Elgin, Dec. 29, 1906, *U. S. C. C. Ap.*, 366, 1477–8.

Trading and fishing rights of American registered vessel, 1461.

Treaties cited: Hay-Bond, provisions summarized, 1456.

Treaty coast, Americans actually fished on, since 1818, not disputed, 1460.

Treaty rights, colonial statutory clause saving, interpretation, 1458–9.

Treaty rights set forth, Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 1463.

United States, statute of 1887, *U. S. C. Ap.*, 96, to end relations with Canada and Newfoundland if American vessels interfered with, 1449.

Statutes, *see* Statutes cited.

Vessel fishery, American fishery must be, 1498.

"Vessels," rights of, mean rights of "owners," Root to Reid, June 30, 1906, *U. S. C. Ap.*, 978, 1465.

West coast, herring fishery, 1454–55.

West coast of Newfoundland, question as to bays on, had not arisen in 1888, 1452.

"Western Star," quotations from, situation in Newfoundland in 1906, 1465.

Winter, statement of, in "Morning Post," Sept. 11, 1907, *U. S. C. C. Ap.*, 404: bait act of 1887 not intended to interfere with sale of herring as article of consumption, 1451; Bond sought reciprocity, 1450; *modus vivendi* not considered by court in Crane-Dubois case, 1496.

Question 2, pp. 1505–1544. (July 21, 22, 1910.)

Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, fishing a trade, 1533.

Aliens, employment of, question not raised by Evarts-Salisbury correspondence, 1521.

Aliens in crews, custom of employing, Root to Reid, June 30, 1906, *U. S. C. Ap.*, 979, 1530.

Americans on foreign vessels not entitled to fish, 1507.

Anstruther's report, French crew more homogeneous than others, 1531.

Authorization to exercise treaty right, fishermen must exhibit American, FITZPATRICK, 1515.

Authorization to exercise treaty right presumed in subjects of United States, 1524.

Bingham *v. Salene*, 14 *Pac. Rep. (Oregon)*, inapplicable here, 1531–2.

Bond, speech, April 7, 1905, *U. S. C. C. Ap.*, 415, entire crews of Nova Scotians, 1530.

Cape Breton, Nova Scotia, and Newfoundland, employment of inhabitants of, a matter of public knowledge, GRAY, 1529–30.

Carr to minister of marine, Nov. 1, 1886, *U. S. C. Ap.*, 896, employment of Nova Scotians by Americans, 1529.

Cases cited: Bingham *v. Salene*, 14 *Pac. Rep. (Oregon)*, not applicable here, 1531–2. Manchester *v. Norfolk*, *Year Book Henry VII*, fishing for profit may be performed through servants, 1531. Wickham *v. Hawker*, 7 *M. & W. Ex. Rep.*, 63, fishing for profit may be performed through servants, 1531.

Commercial privileges to fishing vessels, 1512.

Crews, composite character of: Case of the Pearl Nelson, *U. S. C. Ap.*, 845, 1529.

Imperial statutes: 1660, *B. C. Ap.*, 514, 1525; 1775, *B. C. Ap.*, 543, 1527.

Impressment practice shows British knowledge of, 1528. Sabine's report, Feb. 10, 1852, *U. S. C. Ap.*, 152, 1527–8. Unquestioned, Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1005, 1530.

Crews, custom of employing aliens in, Root to Reid, June 30, 1906, *U. S. C. Ap.*, 979, 1530.

Elder, Honorable Samuel J.—Continued.

Question 2—Continued.

- Crews, entire, of Nova Scotians, Bond, speech, April 7, 1905, *U. S. C. C. Ap.*, 415, 1530.
- Crews, French, more homogeneous than others, 1531, Anstruther's report, 1531.
- Crowell's report, *U. S. C. C. Ap.*, 211, Feb. 10, 1852, Americans always employed Nova Scotians, 1529.
- Customs, circular instructions to collectors of, Sabine's report, Feb. 20, 1852, 1527-8.
- Delaware law restricting fishing, *B. C. Ap.*, 788, LAMMASCH, 1510.
- DRAGO: "Inhabitants," 1516. Necessity of license from U. S. to fishermen, 1517-18. United States has right to regulate, 1516.
- Durand, Root to, Oct. 19, 1905, *U. S. C. Ap.*, 967, evidence of American character of vessel sufficient, 1509.
- Employ Newfoundlanders: Affidavits showing Americans allowed to, Fortune Bay incident, 1521-24. Americans allowed to, McLaughlin to Seward, Apr. 2, 1878, *U. S. C. Ap.*, 648, 1521.
- Employees, trade like fishery to be conducted by hiring such as can be secured, 1533.
- Employment of aliens in crews, custom of, Root to Reid, June 30, 1906, *U. S. C. Ap.*, 979, 1530.
- Employment of aliens not raised by Evarts-Salisbury correspondence, 1521.
- Employment of inhabitants of Nova Scotia, Cape Breton, and Newfoundland a matter of public knowledge, GRAY, 1529-30.
- Employment of Nova Scotians by Americans: Always existed, Crowell's report, *U. S. C. C. Ap.*, 211, Feb. 10, 1852, 1529. Carr to minister of marine, Nov. 1, 1886, *U. S. C. Ap.*, 698, 1529.
- Evarts-Salisbury correspondence did not raise question of employment of aliens, 1521.
- Evarts to President, May 17, 1880, *B. C. Ap.*, 284, Fortune Bay case, no limit on grant, right to introduce foreign fishermen, 1520.
- Fishermen and servants, trade carried on by, GRAY, 1526.
- Fishermen, license from United States to, necessity for, DRAGO, 1517-18.
- "Fishermen, seamen, servants," imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.
- Fishing and trading, regulations of, imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.
- Fishing for profit may be performed through servants: 1531. Manchester v. Norfolk, *Year Book Henry VII*, 1531. Wickham v. Hawker, 7 *M. & W. Ex. Rep.*, 63, 1531-2.
- Fishing "in the interest of an inhabitant" of the United States, LAMMASCH, 1510.
- Fishing is a trade: 1531. Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, 1533. House of Commons committee, Apr. 24, 1793, *U. S. C. C. Ap.*, 562, 1532. Newfoundland Assembly reports, 1845, 1846, 1847, *U. S. C. Ap.*, 1068, 1071, 1533.
- Fishing restrictions: Delaware law, *B. C. Ap.*, 788, LAMMASCH, 1510; Maryland law, *B. C. Ap.*, 793, LAMMASCH, 1510.
- Fishing vessels, commercial privileges to, 1512.
- FITZPATRICK: Fishermen must exhibit American authorization to exercise treaty right, 1515. Foreign vessel can not be chartered for American fishery, 1508-9. Passport compared with license to fish, 1518.
- Foreign fishermen, right to introduce, Evarts to President, May 17, 1880, *B. C. Ap.*, 284, 1520.

Elder, Honorable Samuel J.—Continued.

Question 2—Continued.

Foreign power, United States or Great Britain could not grant right to, 1520.
Foreign vessels: Americans on, not entitled to fish, 1507. Can not be chartered for American fishery, FITZPATRICK, 1508-9.

Foreigners in British navy, LAMMASCH, 1527.

Fortune Bay incident: Affidavits showing Americans allowed to employ Newfoundlanders, 1521-24. Evarts to President, May 17, 1880, *B. C. Ap.*, 284, 1520.

Fortune Bay, others than Americans fishing therein, 1521.

France, Spain, and Newfoundland, statutes of, not applicable to this question, 1534.

French crews more homogeneous than others, 1531, Anstruther's report, 1531.

Grant, no limit on, Evarts to President, May 17, 1880, *B. C. Ap.*, 284, 1520.

GRAY: Effect of repeal of American registry laws, 1513. Employment of inhabitants of Nova Scotia, Cape Breton, and Newfoundland a matter of public knowledge, 1529-30. Trade carried on by servants and fishermen, 1526.

Great Britain or United States could not grant right to foreign power, 1520.

Great Britain, statutes of. See Statutes cited, *Imperial*.

Grey, Reid to, Oct. 6, 1906, *B. C. Ap.*, 506, modus not to be used to interpret treaty, shipment of Newfoundlanders, 1536-7.

Grey to Reid: Feb. 2, 1906, *U. S. C. Ap.*, 972, 976, requests certificate of inhabitancy of United States, 1519; treaty right confined to inhabitants of United States, 1505. June 20, 1907, *U. S. C. Ap.*, 1005, mixed nationality of crews unquestioned, 1530.

Hawker, Wickham v., 7 *M. & W. Ex. Rep.*, 63, fishing for profit may be performed through servants, 1531.

House of Commons committee, Apr. 24, 1793, *U. S. C. C. Ap.*, 562, fishing is a trade, 1532.

Impressment practice shows British knowledge of composite character of crews, 1528.

"Inhabitancy" is the only topic under this question, 1534-40.

Inhabitancy of United States, requests certificate of, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 976, 1519.

"Inhabitant, in the interest of an," fishing, LAMMASCH, 1510.

Inhabitants: Defined, 1533. DRAGO, 1516. Of Nova Scotia, Cape Breton, and Newfoundland, employment of a matter of public knowledge, GRAY, 1529-30. Of United States: must be authorized to exercise treaty right, 1507, 1509; treaty right confined to, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 972, 1505; vessels under American registry must be owned by, 1511.

Instructions, circular, to collectors of customs, Sabine's report, Feb. 20, 1852, 1527-8.

Interpret treaty, modus not to be used to, Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 1536-7.

LAMMASCH: Danger of categorical answer to question 2, 1543-4. Delaware law restricting fishing, *B. C. Ap.*, 788, Maryland law restricting fishing, *B. C. Ap.*, 793, 1510. Effect of repeal of American registry laws, 1514. Fishing "in the interest of an inhabitant" of the United States, 1510. Foreigners in British navy, 1527. Question is general, 1542-3. Right of United States to restrict enjoyment of treaty right, 1517.

License from United States to fishermen, necessity of, DRAGO, 1517-18.

License to fish, passport compared with, FITZPATRICK, 1518.

Licenses, fishing, issued to individuals, not vessels, 1515.

Elder, Honorable Samuel J.—Continued.

Question 2—Continued.

- Limit, no, on grant, Evarts to President, May 17, 1880, *B. C. Ap.*, 284, 1520.
- McLaughlin to Seward, Apr. 2, 1878, *U. S. C. Ap.*, 648, Americans allowed to employ Newfoundlanders, 1521.
- Manchester v. Norfolk, *Year Book Henry VII*, fishing for profit may be performed through servants, 1531.
- Maryland law restricting fishing, *B. C. Ap.*, 793, LAMMASCH, 1510.
- Minister of Marine, Carr to, Nov. 1, 1886, *U. S. C. Ap.*, 896, employment of Nova Scotians by Americans, 1529.
- Modus not to be used to interpret treaty, Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 1536-7.
- Newfoundland Assembly, reports, 1845, 1846, 1847, *U. S. C. Ap.*, 1068, 1071, fishing a trade, 1533.
- Newfoundland, Cape Breton, and Nova Scotia, employment of inhabitants of a matter of public knowledge, GRAY, 1529-30.
- Newfoundland, France, and Spain, statutes of, not applicable to this question, 1534.
- Newfoundlanders: Affidavits showing Americans allowed to employ, Fortune Bay incident, 1521-24. Americans allowed to employ, McLaughlin to Seward, Apr. 2, 1878, *U. S. C. Ap.*, 648, 1521. Shipment of, Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 1536-7.
- Norfolk, Manchester v., *Year Book Henry VII*, fishing for profit may be performed through servants, 1531.
- Norfolk, case of the Duchess of, *see supra*, Manchester v. Norfolk.
- Nova Scotia, Cape Breton, and Newfoundland, employment of inhabitants of, a matter of public knowledge, GRAY, 1529-30.
- Nova Scotians: Americans always employed, Crowell's report, *U. S. C. C. Ap.*, 211, Feb. 10, 1852, 1529. Employment of by Americans, Carr to Minister of Marine, Nov. 1, 1886, *U. S. C. Ap.*, 698, 1529. Entire crews of, Bond, speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 415, 1530.
- Passport compared with license to fish, FITZPATRICK, 1518.
- Pearl Nelson, case of the, *U. S. C. Ap.*, 845, composite character of crew, 1529.
- President, Evarts to, May 17, 1880, *B. C. Ap.*, 284, Fortune Bay case, no limit on grant, right to introduce foreign fishermen, 1520.
- Registry, American: Statute, *U. S. C. Ap.*, 1126-7, 1513; effect of repeal of American, GRAY, 1513, LAMMASCH, 1514. Vessels on treaty coasts were under, 1512. Vessels under, must be owned by inhabitants of United States, 1511.
- Regulate, United States has right to, DRAGO, 1516.
- Regulations of trading and fishing, Imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.
- Reid, Grey to: Feb. 2, 1906, *U. S. C. Ap.*, 972, 976, requests certificate of inhabitancy of United States, 1519; treaty right confined to inhabitants of United States, 1505. June 20, 1907, *U. S. C. Ap.*, 1005, mixed nationality of crews unquestioned, 1530.
- Reid, Root to, June 30, 1906, *U. S. C. Ap.*, 978, 979: American "vessel" may take fish, 1610-12; custom of employing aliens in crews, 1530.
- Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, modus not to be used to interpret treaty, shipment of Newfoundlanders, 1536-7.
- Right, treaty: Confined to inhabitants of United States, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 972, 1505. Inhabitants of United States must be authorized to exercise, 1507, 1509. Resides in United States, 1507.

Elder, Honorable Samuel J.—Continued.

Question 2—Continued.

Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 967, evidence of American character of vessel sufficient, 1509.

Root to Reid, June 30, 1906, *U. S. C. Ap.*, 978, 979: American "vessel" may take fish, 1510-12; custom of employing aliens in crews, 1530.

Root, "vessel rights" only a convenient terminology, 1506.

Sabine's report, circular instructions to collectors of customs, Feb. 20, 1852, composite character of crews, 1527-8.

Salene, Bingham v., 14 *Pac. Rep. (Oregon)*, inapplicable here, 1531-2.

Salisbury-Evarts correspondence did not raise question of employment of aliens, 1521.

"Seamen, servants and fishermen," imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.

Servants and fishermen, trade carried on by, GRAY, 1526.

Servants, fishing for profit may be performed through, *Manchester v. Norfolk*, 1531; *Wickham v. Hawker*, 7 *M. & W. Ex. Rep.*, 63, 1531-2.

"Servants, seamen, and fishermen," imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.

Seward, McLaughlin to, Apr. 2, 1878, *U. S. C. Ap.*, 648, Americans allowed to employ Newfoundlanders, 1521.

Spain, France, and Newfoundland, statutes of, not applicable to this question, 1534.

Statutes cited: *Delaware*: Law restricting fishing, *B. C. Ap.*, 788, LAMMASCH, 1510. *Imperial*, 1660, *B. C. Ap.*, 514, composite character of crews, 1525; 1699, *B. C. Ap.*, 525, regulations of trading and fishing, "servants, seamen, and fishermen," 1526-7; 1775, *B. C. Ap.*, 543, composite character of crews, 1527. *Maryland*, law restricting fishing, *B. C. Ap.*, 793, LAMMASCH, 1510. *United States*, Registry, *U. S. C. Ap.*, 1126-27, 1513.

Statutes of Newfoundland, France, and Spain not applicable to this question, 1534.

Subjects of United States presumed to have authorization to exercise treaty right, 1524.

Summary of argument, 1540-1.

Trade carried on by servants and fishermen, GRAY, 1526.

Trade, fishing is a: 1531. Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, 1533. House of Commons committee, Apr. 24, 1793, *U. S. C. C. Ap.*, 562, 1532. Newfoundland Assembly reports, 1845, 1846, 1847, *U. S. C. Ap.*, 1068, 1071, 1533.

Trade like fishery to be conducted by hiring such employees as can be secured, 1533.

Trading and fishing, regulations of, imperial statute, 1699, *B. C. Ap.*, 525, 1526-7.

Treaty coasts, vessels on, were registered, 1512.

Treaty right: Authority to exercise, presumed in subjects of United States, 1524. Confined to inhabitants of United States, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 972, 1505. Fishermen must exhibit American authorization to exercise, FITZPATRICK, 1515. Resides in United States, 1507. Right of United States to restrict enjoyment of, LAMMASCH, 1517. United States inhabitants must be authorized to exercise, 1507, 1509.

United States or Great Britain could not grant right to foreign power, 1520. United States statutes of, see Statutes cited.

Vessel, evidence of American character of, sufficient, Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 967, 1509.

Elder, Honorable Samuel J.—Continued.*Question 2—Continued.*

"Vessel rights" only a convenient terminology, Root, 1506.

Vessels; American, right to fish, Root to Reid, June 30, 1906, *U. S. C. Ap.*, 978, 1510-12. Fishing licenses issued to individuals, not, 1515. Of American registry must be owned by inhabitants of United States, 1511.

On treaty coasts were registered, 1512.

Wickham v. Hawker, 7 *M. & W. Ex. Rep.*, 63, fishing for profit may be performed through servants, 1531.

Questions 3 and 4, pp. 1544-53. (July 22, 1910.)

Anstruther, report, *U. S. C. C. Ap.*, 369, dangers of fishing, 1549-1550.

Bay of Islands, geography of, 1548.

Canadian instructions, Apr. 16, 1887, *U. S. C. Ap.*, 921, entry and clearance may be made without going ashore, 1552.

Clear, fine for failure to, case of the Colombia, *U. S. C. C. Ap.*, 632, 1548-9.

Clearance and entry may be made without going ashore, Canadian instructions

April 16, 1887, *U. S. C. Ap.*, 921, 1552.

"Clearance" involved in "entry," 1545.

Clearance, object of, FITZPATRICK, 1550.

Columbia, case of the, *U. S. C. C. Ap.*, 632, fine for failing to clear, 1548-9.

"Conditional" in question 4, meaning of, 1544.

Customs dues: Entry can be compelled only to collect, 1547. Fishing vessels do not pay, 1547. Not exacted from fishing vessels, Elgin to MacGregor, Sept. 3, 1906, *U. S. C. Ap.*, 989, 1547.

Dues, payment of, practically condition precedent to fishing, 1544-5.

Elgin to MacGregor, Sept. 3, 1906, *U. S. C. Ap.*, 989, customs dues not exacted from fishing vessels, 1547.

"Entry" fishing vessel should not be required to make, 1546.

Entry and clearance may be made without going ashore, Canadian instructions, Apr. 16, 1887, *U. S. C. Ap.*, 921, 1552.

"Entry" and "report": Distinguished: 1545; imperial statute, 1775, *B. C. Ap.*, 543, 1545-6. United States never claimed exemption from, for trading vessels, 1546.

Entry can be compelled only to collect customs dues, 1547.

"Entry" involves "clearance," 1545.

Everett Steele, case of, *U. S. C. Ap.*, 842, forced report, 1552.

Fishing, dangers of, Anstruther's report, *U. S. C. C. Ap.*, 369, 1549-1550.

Fishing, payment of dues practically condition precedent to, 1544-5.

Fishing vessel should not be required to make "entry," 1546.

Fishing vessels do not pay customs dues, 1547; Elgin to MacGregor, Sept. 3, 1906, *U. S. C. Ap.*, 989, 1547.

FITZPATRICK, object of clearance, 1550. Smuggling an abuse of treaty right, 1547.

Great Britain, statutes of. *See* Statutes cited, *Imperial*.

Ice, danger of, makes report impracticable, 1549.

Instructions, Canadian, Apr. 16, 1887, *U. S. C. Ap.*, 921, entry and clearance may be made without going ashore, 1552.

Islands, Bay of, geography of, 1548.

MacGregor, Elgin to, Sept. 3, 1906, *U. S. C. Ap.*, 989, customs dues not exacted from fishing vessels, 1547.

Modus vivendi of 1906 and 1907 provide for report when physically possible, 1549.

Payment of dues practically condition precedent to fishing, 1544-5.

Elder, Honorable Samuel J.—Continued.

Questions 3 and 4—Continued.

"Report" and "entry": Distinguished: 1545; imperial statute, 1775, *B. C. Ap.*, 543, 1545-6. United States never claimed exemption from, for trading vessels, 1546.

Report: Forced, case of Everett Steele, *U. S. C. Ap.*, 842, 1552. Impracticable to, danger of ice, 1549. Ought not always to be required, 1551-3. Should not be required where shelter is sought, 1552. Sufficient to prevent smuggling, 1547. When physically possible, provided in *modus vivendi* of 1906 and 1907, 1549.

Shelter, no report should be required in case of, 1552.

Smuggling: An abuse of treaty right, FITZPATRICK, 1547. Report sufficient to prevent, 1547.

Statutes cited: *Imperial*, 1775, *B. C.*, *Ap.* 543, "report" and "entry" distinguished, 1545-6.

Trading vessels, exemption from entry and report, United States never claimed, 1546.

Treaty right, smuggling an abuse of, FITZPATRICK, 1547.

Question 6, pp. 1553-1577. (July 22, 1910.)

American, Franco-, dispute, 1821-4, 1568-9.

Amherst, Port, the Mascot ordered out of, 1572.

Anderson *v.* Anderson, 1895, 1 *Q. B.*, 749, words to be used in their usual sense, 1564-5.

Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, Americans expected to fish in bays on west coast, 1567.

Bayard, case of the, 1572.

Bayard, West to, Mar. 19, 24, 1886, *U. S. C. Ap.*, 755, notice not to fish in British North American territorial waters, 1573.

Bayard to West, Mar. 23, 1886, *U. S. C. Ap.*, 755, notice not to fish in British North American territorial waters, 1573.

Bayard-Chamberlain treaty, *U. S. C. Ap.*, 39-40, delimited bays on non-treaty coast only, 1573.

Bays: Americans expected to fish in, on west coast of Newfoundland, Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, 1567. Americans fished therein in 1820-1, 1568-9. Americans fished in, address of Newfoundland Assembly to Queen, 1846, *U. S. C. Ap.*, 1072-3, 1570. Included in "coast:" British proposal for treaty of 1818, *B. C. Ap.*, 88, 1556-7; Newfoundland Assembly Report, 1845, *U. S. C. Ap.*, 1068, 1565; Scotch herring fisheries act of 1867, 1559. Omitted from 1818 treaty altogether, contention of Bond, 1575. On nontreaty coasts only delimited by Bayard-Chamberlain treaty, *U. S. C. Ap.*, 39-40, 1573. Right to use expressed, Senate Committee Report, *B. C. Ap.*, 436, 1573. Used differently in treaties of 1783 and 1818, 1554.

Beale, pp. 74, 133, 302, 525, words to be given natural meaning, 1564.

Bond's contention: Absurdities of, 1575-6. Bays omitted from 1818 treaty altogether, 1575.

Bond's distinction between "coast" and "coasts," 1555, 1558.

Bonne Bay, case of the Bayard in, 1572.

Boyle to Lyttleton, Apr. 15, 1904, *U. S. C. C. Ap.*, 338, Americans entitled to winter fishery, 1575.

British proposal for treaty of 1818, *B. C. Ap.*, 88, "coast" included "bays," 1556-7.

Canada admitted American rights to coasts, Halifax Commission, 1571.

Canada, statutes of. *See* Statutes cited.

Elder, Honorable Samuel J.—Continued.

Question 6—Continued.

- Canadian instructions, 1886, *U. S. C. Ap.*, 757, concession to Americans to land, 1573.
- Canadian statute, May 22, 1868, *U. S. C. Ap.*, 133, license not necessary for Americans, 1570.
- Cape Ray and Ramea Islands, fishing rights between, Newfoundland customs circular, Oct. 18, 1898, *U. S. C. C. Ap.*, 331-2, 1574.
- Cases cited: *Anderson v. Anderson*, 1895, 1 *Q. B.*, 749, words to be used in their usual sense, 1564-5. *Grey v. Pearson*, 61 *H. L.*, 106, ordinary sense of words to be adhered to, 1564. In re *Harrison*, 30 *Chan. Div.*, 393-4, negotiators of 1818 treaty had some purpose, 1576.
- Chamberlain-Bayard treaty, *U. S. C. Ap.*, 39-40, delimited bays on nontreaty coasts only, 1573.
- "Coast:" And "coasts," Bond's distinction, 1555, 1558. Canada admitted American rights to, Halifax Commission, 1571. Includes "bays," British proposal for treaty of 1818, *B. C. Ap.*, 83, 1556-7. Includes sinuosities, Imperial statute, 1809, *U. S. C. C. Ap.*, 67, 1559. Intention of negotiators of 1818 treaty as to, 1556. Meaning of, treaty of 1818, 1558-9. Means same in treaties of 1783 and 1818, 1553-4. Means same with regard to Labrador as to Newfoundland, Imperial Order in Council, 1819, *U. S. C. Ap.*, 115, 1567. Newfoundland Assembly Report, 1845, *U. S. C. Ap.*, 1068, 1565; Scotch herring fisheries act of 1867, 1559. *Prima facie* includes indentations, harbors, and creeks, 1559. "Shores" means, 1555, 1560.
- Concession to Americans to land, Canadian instructions, 1886, *U. S. C. Ap.*, 757, 1573.
- Creeks, *prima facie* included in "coasts," 1559.
- Cure and dry, right to, 1577.
- Curing and drying rights, Newfoundland customs circular, Oct. 18, 1898, *U. S. C. C. Ap.*, 331-2, 1574.
- Customs circular, Newfoundland, Oct. 18, 1898, *U. S. C. C. Ap.*, 331-2, fishing rights between Ramea Islands and Cape Ray, drying and curing rights, 1574.
- Customs houses and entry, *Grey to Reid*, June 20, 1907, *U. S. C. Ap.*, 1004, 1488.
- Dry and cure, right to, 1577.
- Drying and curing rights, Newfoundland customs circular, Oct. 18, 1898, *U. S. C. C. Ap.*, 331-2, 1574.
- Entry and customs houses, *Grey to Reid*, June 20, 1907, *U. S. C. Ap.*, 1004, 1488.
- Franco-American dispute, 1821-4, 1568-9.
- French rights on west coasts of Newfoundland, 1558.
- Great Britain, statutes of. *See Statutes cited, Imperial.*
- Grey to Reid*, June 20, 1907, *U. S. C. Ap.*, 1004, customs houses and entry, 1488.
- Grey v. Pearson*, 61 *H. L.*, 106, ordinary sense of words to be adhered to, 1564.
- Halifax Commission: Canada admitted American rights to coasts, 1571. Damages demanded for fishing where British now assert there were no fish, 1569-71.
- Hamilton, Bathurst to, June 21, 1819, *B. C. Ap.*, 99, Americans expected to fish in bays on west coast, 1567.
- Harbors *prima facie* included in "coasts," 1559.
- Harrison, in re, 30 *Chan. Div.*, 393-4, negotiators 1818 treaty had some purpose, 1576.

Elder, Honorable Samuel J.—Continued.

Question 6—Continued.

Herring fisheries act, Scotch, of 1867, bays included in coast, 1559.

Indentations, prima facie included in "coasts," 1559.

Interpretation of treaty: Maxwell, *p. 397*, associated words used in common sense, 1562-3. Ordinary sense of words to be adhered to, *Grey v. Pearson, H. L., 61:106*, 1564. Words to be given natural meaning, *Beale, pp. 74, 133, 302, 525*, 1564; *Wensleydale's Golden Rule*, 1564. Words to be used in their usual sense, *Anderson v. Anderson*, 1895, *1 Q. B., 749*, 1564-5.

Instructions, Canadian, 1886, *U. S. C. Ap., 757*, concession to Americans to land, 1573.

Labrador, coast meant same as in Newfoundland, Imperial Order in Council, 1819, *U. S. C. Ap., 115*, 1567.

LAMMASCH, "land covered with water," 1562.

"Land covered with water," LAMMASCH, 1562.

Law Officers of Crown, opinion of, 1841, *U. S. C. Ap., 1043*, "shore" used in general sense with reference to Magdalen Islands, 1561.

License not necessary for Americans, Canadian act, May 22, 1868, *U. S. C. Ap., 133*, 1570.

Lyttleton, Boyle to, Apr. 15, 1904, *U. S. C. C. Ap., 333*, Americans entitled to winter fishery, 1575.

Magdalen Islands: Meaning of "shores," 1560. "Shores" used in 1818 treaty with reference to, 1555. "Shores" used in general sense with reference to, opinion of Law Officers of Crown, 1841, *U. S. C. Ap., 1043*, 1561.

Mascot, case of the, 1572.

Maxwell, *p. 397*, treaty interpretation, associated words used in common sense, 1562-3.

Negotiations, treaty of 1818, west coast of Newfoundland in, 1556.

Negotiators, 1818 treaty, had some purpose, *In re Harrison, 30 Chan. Div., 393-4*, 1576.

Negotiators of 1818 treaty, intention as to "coasts," 1556.

Newfoundland assembly: Address to Queen, 1846, *U. S. C. Ap., 1072-3*, Americans fished in bays, 1570. Report, 1845, *U. S. C. Ap., 1068*, bays included in coasts, 1565.

Newfoundland, coast meant same as in Labrador, Imperial Order in Council, 1819, *U. S. C. Ap., 115*, 1567.

Newfoundland customs circular, Oct. 18, 1898, *U. S. C. C. Ap., 331-2*, fishing rights between Ramea Islands and Cape Ray, drying and curing rights, 1574.

Newfoundland, French rights on west coast of, 1558.

Newfoundland, west coast of: Americans expected to fish in bays, Bathurst to Hamilton, June 21, 1819, *B. C. Ap., 99*, 1567. In 1818 treaty negotiations, 1556.

Nontreaty coasts, only bays on, delimited by Chamberlain-Bayard treaty, *U. S. C. Ap., 39-40*, 1573.

Pearson, *Grey, v., 61 H. L., 106*, ordinary sense of words to be adhered to, 1564.

"Person" and "persons," in Statute of Uses, analogy, 1563.

Queen, address of Newfoundland Assembly to, 1846, *U. S. C. Ap., 1072-3*, Americans fished in bays, 1570.

Ramea Islands and Cape Ray, fishing rights between, Newfoundland customs circular, Oct. 18, 1898, *U. S. C. C. Ap., 331-2*, 1574.

Regulations, authority for King to make, under 1818 treaty, Imperial statute, June 14, 1819, *U. S. C. Ap., 112*, 1566.

Elder, Honorable Samuel J.—Continued.*Question 6—Continued.*

Reid, Grey to, June 20, 1907, *U. S. C. Ap.*, 1004, customs houses and entry, 1488.

Scotch herring fisheries act of 1867, bays included in coast. 1559.

Senate Committee report, *B. C. Ap.*, 436, right to use bays expressed, 1573.

"Shore" used in general sense with reference to Magdalen Islands, opinion of Law Officers of Crown, 1841, *U. S. C. Ap.*, 1043, 1561.

"Shores": Meaning of, Magdalen Islands, 1560. Means "coasts," 1555, 1560. Used in 1818 treaty with reference to Magdalen Islands, 1555.

Sinuosities, "coast" includes, Imperial statute, 1809, *U. S. C. C. Ap.*, 67, 1559.

Statute of Uses, analogy from words "person" and "persons" therein, 1563.

Statutes cited: *Canada*: May 22, 1868, *U. S. C. Ap.*, 133, license not necessary to Americans, 1570. *Imperial*: June 14, 1819, *U. S. C. Ap.*, 112, authorizing King to make regulations under 1818 treaty, 1566; 1819, order in council, *U. S. C. Ap.*, 115, coast meant same as regards Labrador as Newfoundland, 1567; 1867, Scotch herring fisheries act, "coasts" includes bays, 1559; Mar. 30, 1809, *U. S. C. C. Ap.*, 67, "coast" includes sinuosities, 1559.

Summary, 1575-77.

Territorial waters, notice not to fish in British North American: Bayard to West, Mar. 23, 1886, *U. S. C. Ap.*, 755, 1573, West to Bayard, Mar. 19, 24, 1886, *U. S. C. Ap.*, 755, 1573.

Treaties cited: 1783: "bays" not same as in 1818, 1553-4; "coast" means same as in 1818, 1553-4. 1818: "bays" not same as in 1783, 1553-4; British proposal, *B. C. Ap.*, 88, bays included in coast, 1566-7; "coast" means same as in 1783, 1553-4; meaning of "coast," 1558-9.

Treaty coast, warning notices improper as to, 1572.

Warning notices improper as to treaty coast, 1572.

Wensleydale's Golden Rule, words to be given natural meaning, 1564.

West coast of Newfoundland: Americans expected to fish in bays, Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, 1567. French rights on, 1558. In 1818 treaty negotiations, 1556.

West, Bayard to, Mar. 23, 1886, *U. S. C. Ap.*, 755, notice not to fish in British North American territorial waters, 1573.

West to Bayard, May 19, 24, 1886, *U. S. C. Ap.*, 755, notice not to fish in British North American territorial waters, 1573.

Winter fishery, Americans entitled to, Boyle to Lyttleton, Apr. 15, 1904, *U. S. C. C. Ap.*, 338, 1575.

Question 7, pp. 1512, 1577-91 (July 21, 22, 1910).

Bait and supplies: Fishing vessels claim to buy, under general trading rights, GRAY, 1586-7. Purchase of, a commercial privilege, LAMMASCH, 1588-9.

Bayard to West, May 10, 1886, *U. S. C. Ap.*, 764, extension of reciprocal commercial rights, 1581.

Commercial nonintercourse, if continued, President empowered to close ports, United States statute, Mar. 3, 1887, *B. C. Ap.*, 792, 1582.

Commercial privilege, purchase of bait and supplies is, LAMMASCH, 1588-9.

Commercial privileges extended to United States by British colonies: Nov. 5, 1830, Imperial order in council, *B. C. Ap.*, 570-1, 1579-80. Reciprocal commercial privileges, May 29, 1830, United States statute, *B. C. Ap.*, 786, and proclamation, Oct. 5, 1830, *B. C. Ap.*, 786, 1579, 1580.

Elder, Honorable Samuel J.—Continued.

Question 7—Continued.

Commercial privileges: General nature of, shown by "otherwise" in question 7, 1579. Not destroyed by 1818 treaty, 1583-4. Not given by 1818 treaty, House of Representatives committee report, 1887, 1578. Not involved in 1818 treaty, 1577. Of fishing vessels, 1512.

Commercial rights: Denial of, to fishing vessels, President's message, Dec. 5, 1870, *B. C. Ap.*, 241, 1582. Not involved in 1818 treaty, Evarts in Senate, Jan. 24, 1887, 1578. Reciprocal, extension of, Bayard to West, May 10, 1886, *U. S. C. Ap.*, 764, 1581.

DRAGO: Inhabitants of United States entitled to fish from trading vessels, 1587. Evarts, in Senate, Jan. 24, 1887, 1818 treaty does not involve commercial rights, 1578.

Fish from trading vessel, or trade from fishing vessel, LAMMASCH, 1587-8.

Fishing and trading: No mention of impropriety of both, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 974-5, 1590. Permitted by United States register, 1588.

Fishing vessels: Can exercise trading privileges if authorized by United States, FITZPATRICK, 1585-6. Claim to buy bait and supplies under general trading rights, GRAY 1586-7. Commercial privileges of, 1512. Denial of commercial rights to, President's message, Dec. 5, 1870, *B. C. Ap.*, 241, 1582.

FITZPATRICK: Fishing vessels can exercise trading privileges if authorized by United States, 1585-6.

GRAY: Fishing vessels claim to buy bait and supplies under general trading rights, 1586-7.

Great Britain, statutes of. *See* Statutes cited, *Imperial*.

Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 974-5, no mention of impropriety of both fishing and trading, 1590.

House of Representatives committee report, 1887, 1818 treaty does not give commercial privileges, 1578.

Inhabitants fishing, can they also trade, 1582-3.

Inhabitants of United States entitled to fish from trading vessels, DRAGO, 1587.

LAMMASCH: Purchase of bait and supplies commercial privilege, 1588-9.

Right to fish from trading vessel or trade from fishing vessel, 1587-8.

Tribunal should not seek sources of American right to trade, 1584.

Manning's report to House of Representatives, 1818 treaty has no application to right to "touch and trade," 1577-8.

"Otherwise" in question 7 shows general nature of commercial privileges, 1579.

Ports, President empowered to close, if commercial nonintercourse continued, United States statute, Mar. 3, 1887, *B. C. Ap.*, 792, 1582.

President's message, Dec. 5, 1870, *B. C. Ap.*, 241, denial of commercial rights to fishing vessels, 1582.

Reciprocal commercial privileges, British colonies and United States, United States statute, May 29, 1830, *B. C. Ap.*, 786, and proclamation, Oct. 5, 1830, *B. C. Ap.*, 786, 1579, 1580.

Reciprocal commercial rights, extension of, Bayard to West, May 10, 1886, *U. S. C. Ap.*, 764, 1581.

Register, United States, of vessels permits both trading and fishing, 1588.

Reid, Grey to, Feb. 2, 1906, *U. S. C. Ap.*, 974-5, no mention of impropriety of both fishing and trading, 1590.

Elder, Honorable Samuel J.—Continued.

Question 7—Continued.

- Statutes cited: *Imperial*: Order in council, 1830, *B. C. Ap.*, 570-1, commercial privileges extended to U.S. by British colonies, 1579-80. *United States*: May 29, 1830, *B. C. Ap.*, 786, reciprocal commercial privileges, 1579, 1580, Mar. 3, 1887, *B. C. Ap.*, 792, President empowered to close ports if commercial nonintercourse continued, 1582.
- "Touch and trade," 1818 treaty has no application to right to, Manning's report to House of Representatives, 1577-8.
- Trade from fishing vessel, or fish from trading vessel, LAMMASCH, 1587-8.
- Trade, tribunal should not seek sources of American right to, LAMMASCH, 1584.
- Trading and fishing, no mention of impropriety of both, Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 974-5, 1590.
- Trading and fishing permitted by United States register, 1588.
- Trading by inhabitants who are fishing, 1582-3.
- Trading privileges may be exercised by fishing vessels if authorized by United States, FITZPATRICK, 1585-6.
- Trading rights, general, fishing vessels claim under, right to buy bait and supplies, GRAY, 1586-7.
- Trading vessels, United States inhabitants entitled to fish from, DRAGO, 1587.
- Treaties cited: 1818, does not destroy commercial privileges, 1583-4; does not give commercial privileges, House of Representatives committee report, 1887, 1578; does not involve commercial privileges, 1577; does not involve commercial rights, Evarts in Senate, Jan. 24, 1887, 1578; has no application to right to "touch and trade," Manning's report to House of Representatives, 1577-8.
- West, Bayard to, May 10, 1886, *U. S. C. Ap.*, 764, extension of reciprocal commercial rights, 1581.

Ewart, John S., K. C.

Question 1, pp. 1367-1443. (July 18, 19, 1910.)

- Adams' diary, Nov. 29, 1782, *B. C. C. Ap.*, 103, "right" to ocean fishery and "liberty" to coast fishery, 1377-8.
- Adams drafted plan 1783 treaty using "liberty," 1376.
- Adams' Memoirs, Dec. 14, 1814, *B. C. C. Ap.*, 147, treaty right a continuation of previous rights, 1432.
- Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 74, partition theory, 1433.
- Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 85, partition theory, 1433.
- Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 65, partition theory, 1432.
- Adams to Rush, Apr. 5, 1815, *U. S. C. C. Ap.*, 618, British and American rights equal, 1431.
- Adams to Russell, May 3, 1822, *B. C. C. Ap.*, 156, treaty right a continuance of previous rights, 1433.
- Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318: Americans discovered fisheries, New England defended them, 1375, 1379; partition theory, 1431; "right" and "liberty," 1376.
- Adams, C. F.: *B. C. C. Ap.*, 105, "right" to ocean fishery and "liberty" to coast fishery, 1378.
- Advantages of British fishermen, geographical and by treaty, 1422.
- Alaska Packers Association. *United States v.*, 79 *Fed. Rep.*, 152: "in common," 1397-8; power of regulation, 1398.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

American commissioners, report of, Dec. 25, 1814, *B. C. C. Ap.*, 150, partition theory, 1432.

American, Franco-, controversy, 1404-5.

Articles of confederation gave Congress limited authority, 1385.

Bait, regulations, imperial statute, 1824, *B. C. Ap.*, 567, GRAY, 1401-2.

Ballast, regulations, imperial statute, 1824, *B. C. Ap.*, 567, GRAY, 1401-2.

Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, regulations on Labrador coast, 1401.

Boutwell circulars, reason for clause regarding obedience to local regulations, 1407-9.

British condition in 1782, not helpless, 1374.

Canadian regulations, FRIZPATRICK, 1407.

Canals, right to regulate, 1413.

Castlereagh, Adams to, Jan. 22, 1816, *B. C. Ap.*, 74, partition theory, 1433.

Coastal waters defined, 1396.

Colonial charters: Fishing liberties, 1369-71. 1691, Massachusetts charter, right of free fishery reserved to British subjects, 1369-70. 1620, Virginia charter, right of King to give fishery monopoly disputed, Sabine's report, *U. S. C. Ap.*, 1166-70, 1369.

Colonial charters, laws regulating fisheries under, *B. C. Ap.*, 770-76, 1370-1.

Colonial fishing rights covered in 1783 treaty by "free fishing," 1372.

Colonial liberties in fishery, 1369-71. *See* Liberties.

Colonial regulation statutes: Between 1783-1818, 1395-6. 1786, imperial statute, *B. C. Ap.*, 558, regulations, nets, desertion of fishermen, 1395. 1788, Lower Canada, *B. C. Ap.*, 592, regulations, interference with nets, offal, 1395. 1793, New Brunswick, *B. C. Ap.*, 595, regulations, nets in rivers, creeks, etc., 1395. 1807, Lower Canada, *B. C. Ap.*, 601, regulations, ballast, nets, seines in creeks and harbors, 1395-6. 1818, New Brunswick, *B. C. Ap.*, 605, regulations, offal, 1396.

Colonial rights in fishery preserved in 1783 treaty: Livingstone to Washington, Mar. 12, 1783, *B. C. C. Ap.*, 132, 1382. Madison to Randolph, Mar. 12, 1783, *B. C. C. Ap.*, 132, 1383.

Colonies not connected governmentally, 1370.

Confederation, Articles of, gave Congress limited authority, 1385.

Congress, report of committee, 1782, disclaimed right to in-shore fishery, 1372.

Constitutional limitations in United States, 1439.

Construction of treaty, rules, 1368.

Cooley, p. 575, right to regulate, 1440.

DRAGO: United States position re partition theory, 1428-9.

Dunham v. Lamphere, 3 Gray, 263, free fishing to American citizens does not prohibit State regulation, 1391-4.

Evarts and Root only objected to regulations, 1439.

Evarts-Salisbury correspondence, 1415-20.

Evarts to Welsh, Aug. 1, 1879, *B. C. Ap.*, 277, joint regulations, 1425.

Exclusion law, LAMMASCH, Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap.*, 124, 1407.

Exclusive, French rights claimed to be, 1404; are not, 1381-2.

Exclusive, grant to United States in 1783 not, 1381, 1382.

Executive and legislative acts alleged to be violations of treaty, list of requested by tribunal, 1443.

Extraterritoriality, Americans claim, 1367.

Extraterritoriality, "liberty" is not right of, 1382.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

Fishermen, American, not released from British control by treaty of 1783, 1381.

Fisheries conceded to Americans in 1782, reasons for, 1379–80.

Fisheries discovered by Americans, Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318, 1375, 1379.

Fishery rights insisted on by American commissioners, Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, 1378–9.

Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, American commissioners insist on fishery rights, 1378–9.

FITZPATRICK: Canadian regulations, 1407. Regulation must be authorized by legislation, 1389. Security for fair administration of regulations, 1423. Treaty right subject to preexisting laws, 1418. United States position re partition theory, 1434.

Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap.*, 124, treaty right subject to local legislation, 1406, exclusion law, LAMMASCH, 1407.

Franco-American controversy, 1404–5.

Free fishing did not mean unlimited fishing, 1371. Imperial statute, 1699, *B. C. Ap.*, 525, 1371–2.

Free fishing, 1783 treaty, means freedom previously enjoyed by colonists, 1372.

Free fishing to American citizens does not prohibit State regulation: Dunham v. Lamphere, 3 Gray, 268, 1391–4. Mass. v. Manchester, 152 Mass. R., 230; 139 U. S., 240, 1394–5.

Frelinghuysen, West to, Oct. 9, 1883, *U. S. C. Ap.*, 751, joint regulations, 1425.

Frelinghuysen to West, July 11, 1884, *U. S. C. Ap.*, 753, joint regulations, 1426.

French rights: Claimed to be exclusive, 1404; but are not, 1381–2.

French shore, regulations unnecessary on, 1404.

Gallatin and Rush, Adams to, July 28, 1818, *B. C. Ap.*, 85, partition theory, 1433.

Gardner's letter, *B. C. Ap.*, 502, regulations unreasonable, position of United States, 1438.

Geographical advantages of British fishermen, 1422.

Governors, Livingstone to the, Feb. 19, 1782, *B. C. C. Ap.*, 30, hazardous position of United States in 1782, 1375.

Grant of liberty to United States did not prevent similar grant to others, 1381.

Granville to Lowell, Oct. 27, 1880, *B. C. Ap.*, 290, joint regulations, 1425.

Granville to Thornton, Apr. 2, 1881, *U. S. C. Ap.*, 733, joint regulations, 1425.

Granville to West, July 15, 1882, *U. S. C. Ap.*, 746, United States freedom from regulations, joint regulations, 1425.

GRAY: American claim, any regulation is derogation of treaty right, 1386–8.

“On terms of equality” means “in common,” 1413–14. Positions of two Governments re partition theory, 1429. Regulations authorized by legislation after 1818, 1406–7. Regulations, 1824, imperial statute, *B. C. Ap.*, 567, nets and harbors, bait, ballast, 1401–2. Treaty right subject to preexisting laws, 1418.

Great Britain, statutes of. See Statutes cited, *Imperial*.

Great Britain's failure to regulate does not indicate inability, 1401.

Green, Livingstone to, Jan. 31, 1782, *B. C. C. Ap.*, 30, hazardous position of United States in 1782, 1374.

Grey's memorandum, *B. C. Ap.*, 495, partition theory, 1436–7.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

Halifax commission: 3-mile limit follows sinuosities of coast, *Proceedings I: 169, 1414-15*. Trescott at: American right unlimited, *B. C. Ap., 266, 1368-9*; rights within 3-mile limit not invasion of territorial jurisdiction, *B. C. C. Ap., 187, 1411*.

Hamilton, Bathurst to, June 21, 1819, *B. C. Ap., 99*, regulations on Labrador coast, 1401.

Harbors, regulations, imperial statute, 1824, *B. C. Ap., 567*, GRAY, 1401-2.

Hoppin, Salisbury to, Apr. 3, 1880, *B. C. Ap., 278*, American fishermen to be regulated, GRAY, 1416-18.

Imperial or local regulations, existence of, 1404.

Imperial statute, 1699, free fishing not unlimited, 1371-2.

"In common": Defined, 1397. Means "on terms of equality," GRAY, 1413-14.

United States v. Alaska Packers Association, 79 *Fed. Rep., 152*, 1397-8.

Inhabitants of certain locality, treaty right limited to, 1427.

In-shore fishery, congressional committee report, 1782, disclaimed right to, 1372.

International and interstate relations, distinction, LAMMASCH, 1394-5.

Interpretation of treaties: 1871 and 1818 must be similarly construed, 1410. Rules, 1368.

Interstate and international relations, distinction, LAMMASCH, 1394-5.

Joint regulations: Attempt to make failed, 1424. Difficulty of securing

American consent in 1783, Root to Reid, June 30, 1906, *B. C. Ap., 500*, 1384.

Evarts to Welsh, Aug. 1, 1879, *B. C. Ap., 277*, 1425. Frelinghuysen to

West, July 11, 1884, *U. S. C. Ap., 753*, 1426. Granville to Lowell, Oct. 27,

1880, *B. C. Ap., 290*, 1425. Granville to Thornton, Apr. 2, 1881, *U. S. C.*

Ap., 733, 1425. Impossibility of United States consent in 1783, 1383. Two

attempts at, on nontreaty shore, 1424-5, 1426. Vain attempt at, on treaty

shore, 1424-5. West to Frelinghuysen, Oct. 9, 1883, *U. S. C. Ap., 751*, 1425.

Jurisdiction, territorial, not invaded by rights within 3-mile limit, Trescott at Halifax commission, *B. C. C. Ap., 187*, 1411.

Labrador coast, regulations on, Bathurst to Hamilton, June 21, 1819, *B. C. Ap., 99*, 1401.

Labrador, regulations in, LAMMASCH, 1407.

LAMMASCH: British may make regulations not destructive of treaty right, 1389. Difference between interstate and international relations, 1394-5.

Exclusion law, Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap., 124*, 1407.

Regulations in Labrador, 1407. Right to regulate subject to remonstrance,

1419. Special Agreement, 1909, article 4, provision for agreement to regu-

lations, 1389-90. Imperial statute, 1775, *B. C. Ap., 545*, Sunday fishing,

1403. United States position *re* partition theory, 1429.

Lamphere, Dunham v., 3 *Gray, 268*, free fishing to American citizens does not prohibit State regulation, 1391-4.

Laws regulating fisheries under colonial charters, *B. C. Ap., 770-776*, 1370-71.

Legislative and executive acts alleged to be violations of treaty, list of, requested by tribunal, 1443.

Legislation, treaty cannot be modified by, Welsh to Salisbury, Nov. 7, 1878, *B. C. Ap., 271*, 1415-16.

Legislation, treaty right subject to local: Forsyth to Stevenson, Feb. 20, 1841,

B. C. Ap., 124, 1406. Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.,*

126, 1406. Vail's report, 1839, *B. C. Ap., 118*, 1405-6.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

- Liberties, colonial, in fishery: 1369–71. 1620, Virginia charter, right of King to give fishery monopoly disputed, Sabine's report, *U. S. C. Ap.*, 1166–70, 1369. 1691, Massachusetts charter, right of free fishery reserved to British subjects, 1369–70. 1699, Imperial statute, free fishing not unlimited, 1371–2. Colonial charters enumerated, fishing liberties, 1370–71. Colonial charters, laws regulating fisheries under, *B. C. Ap.*, 770–76, 1370–1. Colonial fishing rights covered in 1783 treaty by "free fishing," 1372. Free fishing in 1783 treaty, means freedom previously enjoyed by colonists, 1372, did not mean unlimited fishing, 1371. Liberty to fish not license, 1371.
- Liberties in fisheries after 1783: 1390–95. *Dunham v. Lamphere*, 3 *Gray*, 268, free fishing to American citizens does not prohibit State regulation, 1391–4. International and interstate relations, distinction, *LAMMASCH*, 1394–5.
- Manchester, Mass. v.*, 152 *Mass. R.* 230, 139 *U. S.*, 240, free fishing to American citizens does not prohibit State regulation, 1394–5.
- Ownership and regulation of fisheries rested in States after 1783, 1391.
- "Liberty:" And "right," Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318, 1376. Defined, 1381–2. Does not mean license, 1371, 1381. Granted United States in 1783 not exclusive, 1381, 1382. Is not right of extraterritoriality, 1382. To coast fishery, Adams' diary, Nov. 29, 1782, *B. C. C. Ap.*, 103, 1377–8. To coast fishery, C. F. Adams, *B. C. C. Ap.*, 105, 1378. Used in Adams' draft 1783 treaty, 1376.
- License, liberty to fish is not, 1371, 1381.
- Livingstone to the governors, Feb. 19, 1782, *B. C. C. Ap.*, 30, hazardous position of United States in 1782, 1375.
- Livingstone to Green, Jan. 31, 1782, *B. C. C. Ap.*, 30, hazardous position of United States in 1782, 1374.
- Livingstone to Washington, Mar. 12, 1783, *B. C. C. Ap.*, 132, right to fishery is same as before Revolution, 1382.
- Local or Imperial regulations, existence of, 1404.
- Lowell, Granville to, Oct. 27, 1880, *B. C. Ap.*, 290, joint regulations, 1425.
- Lower Canada, statutes of. *See* Statutes cited.
- Madison to Randolph, Mar. 12, 1783, *B. C. C. Ap.*, 132, fishery rights same as before Revolution, 1383.
- Maine, statute 1883, *B. C. C. Ap.*, 196, regulation under 1871 treaty, 1420.
- Maine, statutes of. *See* Statutes cited.
- Manchester, Mass., v.*, 152 *Mass. R.* 230, 139 *U. S.*, 240, free fishing to American citizens does not prohibit State regulation, 1394–5.
- Massachusetts charter, 1691, right of free fishery reserved to British subjects, 1369–70.
- Mass. v. Manchester*, 152 *Mass. R.* 230, 139 *U. S.*, 240, free fishing to American citizens does not prohibit State regulation, 1394–5.
- Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 65, partition theory, 1432.
- Municipal legislation. *See* Local legislation.
- Negotiations, 1782: 1376–79. Adams' diary, Nov. 29, 1782, *B. C. C. Ap.*, 103, "right" to ocean fishery and "liberty" to coast fishery, 1377–8. Adams, C. F., *B. C. C. Ap.*, 105, "right" to ocean fishery and "liberty" to coast fishery, 1378. Commissioners did not propose abdication of British sovereignty, 1380. Fishery rights insisted on by American commissioners, Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, 1378–9.
- Negotiations, 1818, 1396–7.
- New Brunswick, statutes of. *See* Statutes cited.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

- New England defended fisheries, Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318, 1375, 1379.
- Nontreaty shore, two attempts at joint regulations on, 1424–25, 1426.
- Order in council and statute of 1819 do not indicate inability to regulate, 1401.
- Ownership and regulation of fisheries rested in States after 1783, 1391.
- Palmerston, Stevenson to, Mar. 27, 1841, *B. C. Ap.*, 126, treaty right subject to local legislation, 1406.
- Partition theory: 1427–38. Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 74, 1433. Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 85, 1433. Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 65, 1432. Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318, 1431. Grey's memorandum, *B. C. Ap.*, 495, 1436–7. Positions of two governments, GRAY, 1429. Report of American commissioners, Dec. 25, 1814, *B. C. Ap.*, 150, 1432. Root to Reid, June 30, 1906, *B. C. Ap.*, 499, 1437. Senate Committee on Foreign Relations, 1888, *B. C. Ap.*, 435–6, 1435. United States position, DRAGO, LAMMASCH, 1428–9, FITZPATRICK, 1434. Webster's view, *U. S. C. Ap.*, 526, 1434–5.
- Randolph, Madison to, Mar. 12, 1783, *B. C. C. Ap.*, 132, fishery rights same as before Revolution, 1383.
- Regulate: Failure to, by Great Britain, does not show inability, 1401. Inability to, not indicated by order in council and statute of 1819, 1401.
- Regulation: And ownership of fisheries rested in States after 1783, 1391. Must be authorized by legislation, FITZPATRICK, 1389. Of canals, right to, 1413. Power of, United States *v.* Alaska Packers Asso., 79 *Fed. Rep.*, 152, 1398. Under treaty of 1871, Maine, 1883, *B. C. C. Ap.*, 196, 1420.
- Regulations: 1783–1881, no objection to by Americans, 1396. American consent to, not provided in 1818 treaty, 1386. American fishermen to be subject to, Salisbury to Hoppin, Apr. 3, 1880, *B. C. Ap.*, 278, GRAY, 1416–18. Any, is derogation of treaty right, American claim, GRAY, 1386–8. Authorized by legislation after 1818, GRAY, 1406–7. British, American "retaliatory statute" to offset, 1887, *B. C. Ap.*, 792, 1420–21. By one Government or both, 1367. By states not prohibited by provision for free fishing to American citizens: Dunham *v.* Lamphere, 3 *Gray*, 268, 1391–4; Mass. *v.* Manchester, 152 *Mass.*, R., 230, 139 *U. S.*, 240, 1394–5. Canadian, FITZPATRICK, 1407. Colonial: Between 1783–1818, 1395–6; 1786, Imperial, *B. C. Ap.*, 558, regulations, nets, desertion of fishermen, 1395; 1788, Lower Canada, *B. C. Ap.*, 592, regulations, interference with nets, offal, 1395; 1793, New Brunswick, *B. C. Ap.*, 595, regulations, nets in rivers, creeks, etc., 1395; 1807, Lower Canada, *B. C. Ap.*, 601, regulations, ballast, nets, seines in creeks and harbors, 1395–6; 1818, New Brunswick, *B. C. Ap.*, 605, regulations, offal, 1396. Existence of local or Imperial, 1404. Imperial statute, 1824, *B. C. Ap.*, 567, nets and harbors, bait, ballast, GRAY, 1401–2. In Labrador, LAMMASCH, 1407. Joint, *see* Joint regulations. Local reason for clause regarding obedience to, in Boutwell circulars, 1407–9. Not destructive of treaty right, British may make, LAMMASCH, 1389. Objected to only by Root and Evarts, 1439. On Labrador coast, Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, 1401. Preexistent, treaty right subject to, 1436. Provision for agreement to, Special Agreement, 1909, article 4, LAMMASCH, 1389–90. Right to make: Cooley, *p.* 575, 1440; subject to remonstrance, LAMMASCH, 1419; treaty of 1871, arts. 26 and 28, 1412. Security for fair administration of, FITZPATRICK, 1423. Statutory, under colonial charters, *B. C. Ap.*, 770–76, 1370–71. To be applied to American

Ewart, John S., K. C.—Continued.

Question 1—Continued.

- fishermen, Salisbury to Hoppin, Apr. 3, 1880, *B. C. Ap.*, 278, GRAY, 1416-18.
 United States freedom from, Granville to West, July 15, 1882, *U. S. C. Ap.*, 746, 1425. Unnecessary on French shore, 1404. Unreasonable, Gardner's letter, *B. C. Ap.*, 502, 1438. Treaty right not free from, 1412. Unnecessary on French shore, 1404.
- Reid, Root to, June 30, 1906, *B. C. Ap.*, 499, difficulty of securing American consent to joint regulations, 1384; partition theory, 1437.
- Restrictions stated in 1818 treaty not comprehensive, 1400.
- "Right" and "liberty," Adams to Thomas, Aug. 10, 1822, *U. S. C. Ap.*, 318, 1376.
- "Right" to ocean fishery: Adams's diary, Nov. 29, 1782, *B. C. C. Ap.*, 103, 1377-8. C. F. Adams, *B. C. C. Ap.*, 105, 1378.
- Right, treaty: A continuation of previous rights: Adams's Memoirs, Dec. 14, 1814, *B. C. C. Ap.*, 147, 1432; Adams to Russell, May 3, 1822, *B. C. C. Ap.*, 156, 1433. Limited to inhabitants of certain locality, 1427. Not free from regulation, 1412. Not permanent, 1427. Subject to local legislation: Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap.*, 124, 1406; Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 126, 1406; Vail's report, 1839, *B. C. Ap.*, 118, 1405-6. Subject to preexisting laws, GRAY, FITZPATRICK, 1418. Subject to preexistent regulations, 1436.
- Right unlimited, American, Trescott at Halifax commission, *B. C. Ap.*, 266, 1368-9.
- Rights, British and American, equal, Adams to Rush Apr. 5, 1818, *U. S. C. Ap.*, 618, 1431.
- Root and Everts only objected to regulations, 1439.
- Root to Reid, June 30, 1906, *B. C. Ap.*, 500, difficulty of American consent to regulations in 1783, 1384; partition theory, 1437.
- Rush, Adams to, Apr. 5, 1815, *U. S. C. C. Ap.*, 618, British and American rights equal, 1431.
- Rush and Gallatin, Adams to, July 28, 1818, *B. C. Ap.*, 85, partition theory, 1433.
- Russell, Adams to, May 3, 1822, *B. C. C. Ap.*, 156, treaty right a continuance of previous rights, 1433.
- Sabine's report, *U. S. C. Ap.*, 1166-70, Virginia charter, 1620, right of King to give fishery monopoly disputed, 1369.
- Salisbury-Everts correspondence, 1415-20.
- Salisbury, Welsh to, Nov. 7, 1878, *B. C. Ap.*, 271, treaty can not be modified by legislation, 1415-16.
- Salisbury to Hoppin, April 3, 1880, *B. C. Ap.*, 278, American fishermen to be regulated, GRAY, 1416-18.
- Senate Committee on Foreign Relations 1888, *B. C. Ap.*, 435-6, partition theory, 1435.
- Servitude not involved here, 1427.
- Shelburne, Fitzherbert to, Dec. 4, 1782, *B. C. C. Ap.*, 110, American commissioners insist on fishery rights, 1378-9.
- Sinuosities of coast, 3-mile limit follows, Halifax commission. *Proceedings I: 169, 1414-15.*
- Sovereignty, commissioners in 1782 did not propose abdication of British, 1380.
- Special Agreement, 1909, article 4: Order of tribunal regarding remarks on, 1444. Provision for agreement to regulations, IAMMASCH, 1389-90.
- Statute and order in council of 1819 do not indicate inability to regulate, 1401.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

- Statutes cited: *Imperial*: 1699, free fishing not unlimited, 1371-2; 1775, Sunday fishing, LAMMASCH, 1403; 1786, regulations, nets, desertion of fishermen, 1395. 1824, regulations, nets and harbors, bait, ballast, GRAY, 1401-2. *Lower Canada*: 1788, regulations, interference with nets, offal, 1395; 1807, regulations, ballast, nets, seines in creeks and harbors, 1395-6. *Maine*: 1883, regulation under treaty of 1871, 1420. *New Brunswick*: 1793, regulations, nets in rivers, creeks, etc., 1395; 1818, regulations, offal, 1396. *United States*: 1887, "retaliatory statute" to offset British regulations, 1420-1.
- Stevenson, Forsyth to, Feb. 20, 1841, *B. C. Ap.*, 124, treaty right subject to local legislation, 1406, exclusion law, LAMMASCH, 1407.
- Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 126, treaty right subject to local legislation, 1406.
- Summary, 1441-2.
- Sunday fishing, Imperial statute, 1775, *B. C. Ap.*, 545, LAMMASCH, 1403.
- Territorial jurisdiction, not invaded by rights within 3-mile limit, Trescott at Halifax commission, *B. C. C. Ap.*, 187, 1411.
- Thomas, Adams to, Aug. 10, 1822, *U. S. C. Ap.*, 318: Americans discovered fisheries, New England defended them, 1375, 1379; partition theory, 1431; "right" and "liberty," 1376.
- Thornton, Granville to, Apr. 2, 1881, *U. S. C. Ap.*, 733, joint regulations, 1425.
- Three-mile limit: Follows sinuosities of coast, Halifax commission, *Proceedings*, I: 169, 1414-15. Rights within not invasion of territorial jurisdiction, Trescott at Halifax commission, *B. C. C. Ap.*, 187, 1411.
- Treaty advantages to British fishermen, 1422.
- Treaty can not be modified by legislation, Welsh to Salisbury, Nov. 7, 1878, *B. C. Ap.*, 271, 1415-16.
- Treaties cited. See below, Treaty of 1783, Treaty of 1818, Treaty of 1871.
- Treaty of 1783: Does not relinquish British control over American fishermen, 1381. "Free fishing" means preexisting colonial rights, 1372. Grant not exclusive, 1381-2. Preserves colonial fishing rights: Livingstone to Washington, Mar. 12, 1783, *B. C. C. Ap.*, 132, 1382; Madison to Randolph, Mar. 12, 1783, *B. C. C. Ap.*, 132, 1383.
- Treaty of 1818: Does not provide for American consent to regulations, 1386. Must be construed same as 1783 treaty, 1410. Restrictions stated in, not comprehensive, 1400.
- Treaty of 1871, *B. C. Ap.*, 41: Articles 26 and 28, right to regulate, 1412. Maine regulation under, 1883, *B. C. C. Ap.*, 196, 1420. Must be construed same as 1818 treaty, 1410.
- Treaty right. See Right, treaty.
- Treaty shore, vain attempt at joint regulation, 1424-5.
- Trescott, at Halifax commission: American right unlimited, *B. C. Ap.*, 266, 1368-9. Rights within 3-mile limit not invasion of territorial jurisdiction, *B. C. C. Ap.*, 187, 1411.
- United States position: In 1782, hazardous: Livingstone to the governors, Feb. 19, 1782, *B. C. C. Ap.*, 30, 1375; Livingstone to Green, Jan. 31, 1782, *B. C. C. Ap.*, 30, 1374. Partition theory, DRAGO, LAMMASCH, 1428-9, FITZPATRICK, 1434.
- United States, statute 1887, *B. C. Ap.*, 792, "retaliatory statute" to offset British regulations, 1420-21.
- United States, statutes of. See Statutes cited.
- United States v. Alaska Packers' Asso., 79 *Fed. Rep.*, 152: "in common," 1397-8; power of regulation, 1398.

Ewart, John S., K. C.—Continued.

Question 1—Continued.

Vail's report, 1839, *B. C. Ap.*, 118, treaty right subject to local legislation, 1405-6.

Virginia charter, 1620, right of King to give fishery monopoly disputed, Sabine's report, *U. S. C. Ap.*, 1166-70, 1369.

Washington, Livingstone to, Mar. 12, 1783, *B. C. C. Ap.*, 132, right to fishery is same as before Revolution, 1382.

Webster's view re partition theory, *U. S. C. Ap.*, 526, 1434-5.

Welsh, Everts to, Aug. 1, 1879, *B. C. Ap.*, 277, joint regulations, 1425.

Welsh to Salisbury, Nov. 7, 1878, *B. C. Ap.*, 271, treaty can not be modified by legislation, 1415-1416.

West, Frelinghuysen to, July 11, 1884, *U. S. C. Ap.*, 753, joint regulations, 1426.

West, Granville to, July 15, 1882, *U. S. C. Ap.*, 746, United States freedom from regulations, 1425.

West to Frelinghuysen, Oct. 9, 1883, *U. S. C. Ap.*, 751, joint regulations, 1425.

Question 2. Pp. 1340-1360. (July 14, 18, 1910.)

Adams did not contemplate others than Americans fishing from American vessels, 1345.

Agent, principal and, argument of, 1354-56.

Agents: "Citizens," trading through, treaty of 1794, Great Britain-United States, *B. C. Ap.*, 20, 1357-8. Fishing by, 1344. "Inhabitants trading through," treaty of 1815, United States-Great Britain, *B. C. Ap.*, 29, 1358-9. Trading through, treaty of 1871, United States-Great Britain, *B. C. Ap.*, 41, 1359.

Aliens fishing for natives, 1344.

Aliens not allowed to fish: Imperial statute, 1699, *B. C. Ap.*, 525, 1341, 1344, 1346. Unless by treaty right, Imperial statute, 1824, *B. C. Ap.*, 567, 1346, 1348; Imperial statute, 1906, *B. C. Ap.*, 753, 1348.

Aliens, summary of statutes as to, 1347-8.

Bingham v. Salene, 14 *Pac. Rep. (Oregon)*, disagrees with Wickham v. Hawker, 1359.

Canada, statutes of. *See* Statutes cited.

Cases cited: Bingham v. Salene, 14 *Pac. Rep. (Oregon)*, disagrees with Wickham v. Hawker, 1359. Wickham v. Hawker, 7 *M. & W. Ex. Rep.*, 63, rule of interpretation not of law, 1359.

Citizen of state, must be to fish, Delaware statute of 1871, *B. C. Ap.*, 788, 1355.

"Citizens" trading through agents, treaty of 1794, Great Britain-United States, *B. C. Ap.*, 20, 1357-8.

Delaware, statute of 1871, *B. C. Ap.*, 788, must be citizen of state to fish, 1355.

Delaware, statutes of. *See* Statutes cited.

Desertion of British fishermen, Imperial statute, 1786, *B. C. Ap.*, 555, 1342.

Durand, Root to, Oct. 19, 1905, *B. C. Ap.*, 492, "flag admits the man" argument, 1351-3.

Emigration of British fishermen forbidden, Imperial statute, 1775, *B. C. Ap.*, 543, 1342.

Fishery nursery for seamen, 1341.

Fishing by agents, 1344.

"Flag admits the man" argument, Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, 1351-3.

France, treaties of. *See* Treaties cited.

French excluded from Newfoundland waters by treaty, 1345.

Ewart, John S., K. C.—Continued.

Question 2—Continued.

Great Britain, statutes of. *See* Statutes cited, *Imperial*.

Great Britain, treaties of. *See* Treaties cited.

Hawker, Wickham v., 7 *M. & W. Ex. Rep.*, 63: Disapproved by Bingham v. Salene, 14 *Pac. Rep. (Oregon)*, 1359. Rule of interpretation not of law, 1359.

"In common," argument based on, 1356-7.

"Inhabitants" trading through agents, treaty of 1815, United States-Great Britain, *B. C. Ap.*, 29, 1358-9.

"Inhabitants, vessels and," Canadian statute, 1872, *B. C. Ap.*, 631, LAMMASCH, 1349.

Intercourse difficult in 1818, 1345.

Interpretation, rule of, not of law, established by Wickham v. Hawker, 7 *M. & W. Ex. Rep.*, 63, 1359.

LAMMASCH: Population of Newfoundland, 1786, 1343. "Ships or subjects" in imperial statute of 1819, *B. C. Ap.*, 565, 1347. "Vessels and inhabitants" referred to, Canadian statute, 1872, *B. C. Ap.*, 631, 1349.

Newfoundland, population, 1786, LAMMASCH, 1343.

Noninhabitants, employment of, Adams did not contemplate, 1345.

Nursery for seaman, fishery is, 1341.

Persons, three classes to be considered, 1340.

Principal and agent, argument of, 1354-6.

Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, "flag admits the man" argument, 1351-3.

Salene, Bingham v., 14 *Pac. Rep. (Oregon)*, disagrees with Wickham v. Hawker, 1359.

"Ships or subjects" in imperial statute of 1819, *B. C. Ap.*, 565, LAMMASCH, 1347.

Spain, treaties of. *See* Treaties cited.

Spanish excluded from Newfoundland waters by treaty, 1818, 1345.

Spanish rights to fishery renounced, treaty of 1763, *B. C. Ap.*, 7, Spain-Great Britain, 1351.

Statutes cited: *Canada*: 1872, *B. C. Ap.*, 631, "vessels and inhabitants," LAMMASCH, 1349. *Delaware*: 1871, *B. C. Ap.*, 788, must be citizen of State to fish, 1355. *Imperial*: 1699, *B. C. Ap.*, 525, aliens not allowed to fish, 1341, 1344, 1346; 1775, *B. C. Ap.*, 543, British fishermen not to emigrate to America, 1342; 1786, *B. C. Ap.*, 555, desertion of British fishermen, 1342; 1819, *B. C. Ap.*, 565, "ships or subjects," LAMMASCH, 1347; 1824, *B. C. Ap.*, 567, aliens not to fish unless by treaty right, 1346, 1348; 1906, *B. C. Ap.*, 753, aliens not to fish unless by treaty right, 1348. Summary of statutes as to aliens, 1347-8.

"Subjects" of France: Treaty of 1783, 1350. Treaty of Utrecht, 1713, *B. C. Ap.*, 7, 1350.

"Subjects, ships or," Imperial statute, 1819, *B. C. Ap.*, 565, LAMMASCH, 1347.

Trading by agents: treaty of 1794, *B. C. Ap.*, 20, 1357-8; treaty of 1815, *B. C. Ap.*, 29, 1358-9; treaty of 1871, *B. C. Ap.*, 41, 1359.

Treaties cited: 1713, France-Great Britain treaty of Utrecht, *B. C. Ap.*, 7, "subjects" of France, 1350. 1763, France-Great Britain-Spain, *B. C. Ap.*, 7, renunciation of Spanish rights to fisheries, 1351. 1783, Great Britain-France, "subjects" of France, 1350. 1794, Great Britain-United States, *B. C. Ap.*, 20, "citizens" trading through agents, 1357-8. 1815, Great Britain-United States, *B. C. Ap.*, 29, "inhabitants" trading through agents, 1358-9. 1871, Great Britain-United States, *B. C. Ap.*, 41, trading through agents, 1359.

Ewart, John S., K. C.—Continued.

Question 2—Continued.

United States, treaties of. *See* Treaties cited.

Universality of question, 1340.

Utrecht, treaty of, 1713. *See* Treaties cited.

"Vessels and inhabitants," Canadian statute, 1872, *B. C. Ap.*, 631, LAMMASCH, 1349.

Vessels, others than Americans fishing from American, Adams did not contemplate, 1345.

Wickham *v.* Hawker, disapproved by Bingham *v.* Salene, 14 *Pac. Rep. (Oregon)*, 1359.

Wickham *v.* Hawker, 7 *M. & W. Ex. Rep.*, 63, rule of interpretation not of law, 1359.

Question 5, pp. 1228-1340. (July 12, 14, 1910.)

Aberdeen, Everett to: Aug. 10, 1843, *B. C. Ap.*, 130, Everett misread treaty, 1280. May 25, 1844, *B. C. Ap.*, 133, "coasts" meant to include bays, creeks, and harbors, except Bay of Fundy, 1281-2. Mar. 25, 1845, *B. C. Ap.*, 143, 144: bays renounced are those which might be entered, 1237; right to fish in Bay of Fundy, 1286.

Aberdeen to Everett, Mar. 10, 1845, *B. C. Ap.*, 141, relaxation of rule in case of Bay of Fundy, 1285-6.

Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 67, marine league, 1260.

Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 75, 3-mile limit not accepted prior to 1783, 1323.

Adams, Gallatin and Rush to, Oct. 20, 1818, *B. C. Ap.*, 94, fishermen's theory supported, 1261-2.

Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 66, Jaseur incident, 1259.

Adams to Russell, 1822, *B. C. C. Ap.*, 165, 3-mile limit not accepted prior to 1783, 1321-2.

Admiralty, Secretary of, Seymour to, July 21, 1853, *B. C. Ap.*, 202, instructions to British cruisers during 1845-52, 1301; Perry's admission, 1306.

Alaskan boundary arbitration: claim of United States, *Proceedings*, 4:32, 1336-8; United States argument, Grotius' rule of jurisdiction, 1332.

"Alleganean," case of, Grotius' rule of jurisdiction, 1330, 1332.

American, Franco-, controversy of 1821-3, 1273-5. Concerned treaty coast, LAMMASCH, 1274.

"Argus," seizure of, 1229. As evidence of headland theory repudiated, Stanley to Falkland, Sept. 17, 1845, *B. C. Ap.*, 151, 1229-30.

Attorney general of Nova Scotia, memorandum, Sept. 17, 1844, *B. C. Ap.*, 137, exclusion applies to outer as well as inner bays, 1282.

Baker, Bathurst to, Sept. 7, 1815, *B. C. Ap.*, 64, "dominions" synonymous with "possessions" and "territories," 1254.

Bathurst, Adams to, Sept. 25, 1815, *B. C. Ap.*, 67, marine league, 1260.

Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, "dominions" synonymous with "possessions" and "territories," 1254.

Bathurst to Keats, June 17, 1815, *B. C. Ap.*, 63, "dominions" synonymous with "possessions" and "territories," 1254.

Bay: Character of, determined by general configuration, LAMMASCH, 1331. Chignecto, 1282. Existence of, presupposed in Warren's argument, 1249-50. George's, *see* George's Bay. Juristic and geographical meanings of, 1320. Maces, 1282. Minas Basin, 1282. Of Chaleur, *see* Chaleur, Bay of. Of Fundy, *see* Fundy, Bay of. St. John, 1282. St. Mary's, 1282. Territorial: more than 6 miles wide, 1240; defined, 1240. Treaty of 1686, France-Gt. Britain, *B. C. Ap.*, 6, 1231. Within Bay of Fundy, LAMMASCH, 1241.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

Bayard to Phelps, Nov. 15, 1886, *B. C. Ap.*, 357, proposal to settle differences, British position unchanged, 1318-20.

Bayard to West, May 20, 1886, *B. C. Ap.*, 302, relates to commercial privileges only, 1310-11.

Bays: As used by Rush and Marcy, applies to all indentations, 1264. British do not contend that there was no fishing in, in 1824, 1271. Everett's arrangement in 1845, abandonment of American contention as to, 1290. Except Bay of Fundy, included in "coasts," Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133, 1281-2. Exclusion actually practiced from all, 1845-52, GRAY, 1290. Exclusion applies to outer as well as inner, memorandum of attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 137, 1282. In treaty of 1783, must mean larger bays, 1268-9. In treaty of 1818, must mean all bays, GRAY, 1269-70. Inside, in Bay of Fundy, enumerated, 1282. International law on, 1320. Juristic definition of, nonexistent prior to 1818, 1320. Not restricted to 6 miles by Everett, 1282. Objections to opening, minute of executive council, New Brunswick, June 20, 1845, *B. C. Ap.*, 149, 1309. Renounced, are those which might be entered: Cass in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 160, 1237; Davis in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 167, 1237; Everett to Aberdeen, Mar. 25, 1845, *B. C. Ap.*, 144, 1237; Sabine's report, *U. S. C. Ap.*, 1273, 1237; Webster's memorandum, *U. S. C. Ap.*, 530, 1237. Signified same thing in treaties of 1783 and 1818, 1321. Three-mile limit measured from shores or "fishermen's theory," 1234. Treaty of 1778, United States-France, *U. S. C. Ap.*, 92, 1232. Treaty of 1794, United States-Great Britain, *B. C. Ap.*, 23, 1232. Used by United States in general sense, 1265. Would be included in 5-mile limit, treaty of 1806, FITZPATRICK, 1328.

Behring Sea arbitration: American claim of jurisdiction over fisheries, *Proceedings*, 9:156, 1323. Claim of Russia in 1821, *Moore, Dig.*, 1:390, 1324-26. Morgan, arbitrator, Grotius' rule of jurisdiction, 1331-2.

British concessions not indicative of renunciation of principle, 1252.

British laxity in enforcing theory, 1250.

British position adhered to: 1228. Bayard to Phelps, Nov. 15, 1886, *B. C. Ap.*, 357, 1318-20. Rush to his executors, Dec., 1854, *U. S. C. Ap.*, 547, 1308.

British position misunderstood by United States, *U. S. C. C.*, 68, 1229.

Calhoun to Everett, July 5, 1844, *B. C. Ap.*, 135, approving Everett's position in re "Washington," 1283.

Campbell to Seymour, Aug. 26, 1852, *B. C. Ap.*, 195, Perry's admission, Bay of Chaleur, George's Bay, 1305.

Canadian customs circular instructions: Revision of, Lansdowne to Granville, June 8, 1886, *B. C. Ap.*, 318, 1313. Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, 1316-17.

Canadian fishery instructions, 1886, *B. C. Ap.*, 298, 299, 1312-18.

Cannon-shot rule: G. F. de Martens, 1329. Treaty of 1794, United States-Great Britain, *B. C. Ap.*, 23, 1232.

Cape Despair, 1304-5.

Cass in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 160, bays renounced are those which might be entered, 1237; "shelter" idea, 1294.

Castlereagh, Adams to, Jan. 22, 1816, *B. C. Ap.*, 75, 3-mile limit not accepted prior to 1783, 1323.

Chaleur, Bay of, Campbell to Seymour, Aug. 26, 1852, *B. C. Ap.*, 195, 1305.

Chauncey, Vail to, Aug. 29, 1839, *U. S. C. Ap.*, 441, instructions for "Grampus," 1276.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

Chignecto Bay, 1282.

Coast line, 3 miles from, is fishermen's theory, 1239.

"Coasts" meant to include bays, creeks, and harbors, except Bay of Fundy,

Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133, 1281-2.

Colonists opposed to British policy, Fillmore's message, Dec. 6, 1852, *U. S. C. Ap.*, 545, 1308.

Commercial privileges only concerned in Bayard to West, May 20, 1886, *B. C. Ap.*, 302, 1310-11.

Concessions by British not indicative of renunciation of principle, 1252.

Conduct of nations as interpretative of treaty, 1251.

Construction, British: Acquiesced in by Webster, Crampton to Malmesbury, Aug. 2, 1852, *B. C. Ap.*, 156, 1293. Acquiesced in, Webster's notice, July 6, 1852, *B. C. Ap.*, 152, 1291. Changed at colonial request, Marcy to Rush, July 6, 1853, *U. S. C. Ap.*, 549, 1309.

Crampton, Malmesbury to: Aug. 11, 1852, *B. C. Ap.*, 172, instructions long-standing, 1306. Sept. 24, 1852, *B. C. Ap.*, 197, denies statement re 3-mile limit attributed to Malmesbury by Lawrence, 1307-8.

Crampton, negotiations with, Fillmore to Webster, July 20, 1852, *U. S. C. Ap.*, 160, 1292-3.

Crampton to Malmesbury: Aug. 2, 1852, *B. C. Ap.*, 156, Webster acquiesces in British construction, 1293. Aug. 9, 1852, *B. C. Ap.*, 168, Fillmore disagrees with Webster, 1295.

Creeks included in "coasts," Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133, 1281-2.

Cure and dry, right to, limited to treaty coast, LAMMASCH, 1271.

Customs circular, Canadian, Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, 1316-17.

Davis in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 167: bays renounced are those which might be entered, 1237; "shelter" idea, 1294.

Delaware Bay case: 1232. Kent's Commentaries, 1335. 3-mile limit not accepted, 1326. Warren's argument criticised, 1334.

Despair, Cape, 1304-5.

Differences, proposal to settle, Bayard to Phelps, Nov. 15, 1886, *B. C. Ap.*, 357, 1318-20.

Disputes, none prior to 1841, Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 125, 1279.

Dobbin, Shubrick to: Aug. 7, 1853, *U. S. C. C. Ap.*, 176, instructions, 1303-4. Aug. 16, 1853, *U. S. C. C. Ap.*, 178, Seymour's instructions, 1304.

Dobbin to Shubrick, July 14, 1853, *U. S. C. C. Ap.*, 169, shelter theory, fishermen's theory, instructions, 1302-3.

"Dominions" synonymous with "possessions" and "territories": Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 1254. Bathurst to Keats, June 17, 1815, *B. C. Ap.*, 63, 1254.

"Dotterel," orders issued by captain not necessarily indicative of Admiralty orders, 1272.

Dry and cure, right to, limited to treaty coast, LA MASCH, 1271.

English municipal courts accepted 3-mile limit prior to 1818, 1320-1.

Everett, Aberdeen to, Mar. 10, 1845, *B. C. Ap.*, 141, relaxation of rule in case of Bay of Fundy, 1285-6.

Everett, Calhoun to, July 5, 1844, *B. C. Ap.*, 135, approving Everett's position in re "Washington," 1283.

Everett does not restrict bays to six miles, 1282.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- Everett to Aberdeen: Aug. 10, 1843, *B. C. Ap.*, 130, Everett misread treaty, 1280. May 25, 1844, *B. C. Ap.*, 133, "coasts" meant to include bays, creeks, and harbors except Bay of Fundy, 1281-2. Mar. 25, 1845, *B. C. Ap.*, 143, 144: bays renounced are those which might be entered, 1237; right to fish in Bay of Fundy, 1286.
- Everett to Ingersoll, Dec. 4, 1852, *U. S. C. Ap.*, 535, publication of Everett's letter to Aberdeen, 1292.
- Everett's arrangement in 1845, abandonment of American contention as to bays, 1290.
- Everett's letter to Aberdeen, publication of, Everett to Ingersoll, Dec. 4, 1852, *U. S. C. Ap.*, 535, 1292.
- Exclusion actually practiced from all bays, 1845-52, GRAY, 1290.
- Falkland, Stanley to: Nov. 28, 1842, *U. S. C. Ap.*, 1046, regulations practically agreed to by Americans, 1279-80. May 19, 1845, *B. C. Ap.*, 146, relaxation of British position, 1258. Sept. 17, 1845, *B. C. Ap.*, 151, seizure of "Argus" as evidence of headland theory repudiated, 1229-30.
- Falkland to Stanley, Sept. 17, 1844, *B. C. Ap.*, 136, relaxation of rule in regard to Bay of Fundy, 1283.
- Farnham, 1: 25, American 3-mile contention not supported, 1339.
- Fillmore disagrees with Webster, Crampton to Malmesbury, Aug. 9, 1852, *B. C. Ap.*, 168, 1295.
- Fillmore's message, Dec. 6, 1852, *U. S. C. Ap.*, 545, opposition of colonists to Great Britain, 1308.
- Fillmore, Webster to, Aug. 4, 1852, *U. S. C. C. Ap.*, 166, Senate discussion of fisheries, 1294-5.
- Fillmore to Webster, July 20, 1852, *U. S. C. C. Ap.*, 160, negotiations with Mr. Crampton, 1292-3.
- Fishermen's and territorial theories, practical difference, FITZPATRICK, 1245.
- "Fishermen's" contrasted with "territorial" theory, *U. S. A.*, 145, 146, 148, 198, 1243-46.
- "Fishermen's theory": *U. S. C.*, 65, 66, 76, 77, 95, 1243. Based on "shelter theory," 1237. Contradicts treaty, 1237. Does 3-mile limit run from bays or from shores, 1234. Does not involve territoriality, 1234. Dobbin to Shubrick, July 14, 1853, *U. S. C. Ap.*, 169, 1302-3. Espoused by Marcy, 1236. Is simply 3 miles from coast line, 1239. Not mentioned in Webster's incomplete memorandum, *U. S. C. Ap.*, 527, 1298. Supported, Gallatin and Rush to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, 1261-2. Origin of, Paine's report, Dec. 29, 1839, *B. C. Ap.*, 121, 1277-8. Supported, Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 1263.
- FITZPATRICK: International acceptance of 3-mile limit, 1320. Practical difference between territorial and fishermen's theories, 1245. Treaty of 1806, 5-mile limit would include bays, 1328.
- Five-mile limit would include bays, treaty of 1806, FITZPATRICK, 1328.
- Foster, Halifax commission, *B. C. C. Ap.*, 183, 3-mile limit not accepted prior to 1783, 1322.
- France, treaties of. *See* Treaties cited.
- Franco-American controversy of 1821-3: 1273-75. Concerned treaty coast, LAMMASCH, 1274.
- Fuca Straits, boundary line in, Warren's argument criticized, 1335-6. Territorial line established by agreement, 1257.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

Fundy, Bay of: Bay within, LAMMASCH, 1241. "Coasts" meant to include bays, creeks, and harbors, except, Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133, 1281-2. Inside bays in, enumerated, 1282. Relaxation of rule in case of: Aberdeen to Everett, Mar. 10, 1845, *B. C. Ap.*, 141, 1285-6; Falkland to Stanley, Sept. 17, 1844, *B. C. Ap.*, 136, 1283; Sabine's Report, *U. S. C. Ap.*, 1230, 1287-9. Right to fish in, Everett to Aberdeen, Mar. 25, 1845, *B. C. Ap.*, 143, 1286. Shelter refused in, Thayer to Parris, July 20, 1839, *U. S. C. Ap.*, 426, 1275.

Gallatin and Rush to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, fishermen's theory supported, 1261-2.

Geographical and juristic meanings of "bay," 1320.

George's Bay, Campbell to Seymour, Aug. 26, 1852, *B. C. Ap.*, 195, 1305.

Gould, pp. 9-10, American 3-mile contention not supported, 1339.

"Grampus," instructions for, Vail to Chauncey, Aug. 29, 1839, *U. S. C. Ap.*, 441, 1276.

Granville, Lansdowne to, June 8, 1886, *B. C. Ap.*, 318, revision of Canadian customs circular instructions, 1313.

GRAY: "Bays" in treaty of 1818 must mean all bays, 1269-70. Exclusion actually practiced from all bays, 1845-52, 1290. Right to fish in territorial waters not dependent on grant, Webster's incomplete memorandum, *U. S. C. Ap.*, 527, 1300.

Great Britain, Treaties of. See Treaties cited.

Grotius' rule of jurisdiction: 1331; Alaskan Boundary Arbitration, United States argument, 1332; Arbitrator Morgan in Behring Sea Arbitration, 1331-2; case of "Alleganean," 1330, 1332; followed by United States Attorney General, *B. C. Ap.*, 55, 1330.

Gulf of St. Lawrence: Fishing rights in, Oswald, *B. C. C. Ap.*, 87, 1268. Rights in, Strachey to Townsend, Nov. 8, 1882, *B. C. Ap.*, 84, 1267-8. Treaty of 1783, 1266-7. 3-mile limit in, 1333.

Halifax Commission: Foster at, *B. C. C. Ap.*, 183, 3-mile limit not accepted prior to 1783, 1322. United States supported territorial theory, 1236, 1239.

Halleck, American 3-mile contention not supported, 1339.

Harbors included in "coasts," Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133, 1281-2.

Headland line, modality for drawing, 1231.

Headland line, Warren's argument on difficulty of drawing, unfounded, 1231.

Headland theory: Not British, 1229. Seizure of "Argus" as evidence of, repudiated, Stanley to Falkland, Sept. 17, 1845, *B. C. Ap.*, 151, 1229-30.

Ingersoll, Everett to, Dec. 4, 1852, *U. S. C. Ap.*, 535, publication of Everett's letter to Aberdeen, 1292.

"Inside bays" in Bay of Fundy enumerated, 1282.

Instructions, Canadian circular, revision of: Lansdowne to Granville, June 8, 1886, *B. C. Ap.*, 318, 1313. Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, 1316-17.

Instructions, Canadian fishery, 1886, *B. C. Ap.*, 298, 299, 1312-18.

Instructions, Dobbin to Shubrick, July 14, 1853, *U. S. C. Ap.*, 169, 1302-3.

Instructions long-standing, Malmesbury to Crampton, Aug. 11, 1852, *B. C. Ap.*, 172, 1306.

Instructions, Perry's, not printed, 1306.

Instructions, Seymour's, Shubrick to Dobbin, Aug. 16, 1853, *U. S. C. C. Ap.*, 178, 1304.

Instructions, Shubrick to Dobbin, Aug. 7, 1853, *U. S. C. C. Ap.*, 176, 1303-4.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- Instructions to British admiral, Malmesbury to Lawrence, Aug. 13, 1852, *U. S. C. Ap.*, 522, 1307.
- Instructions to British cruisers during 1845-52, Seymour to Secretary of Admiralty, July 21, 1853, *B. C. Ap.*, 202, 1301.
- Instructions to fishermen, request for, Leavitt Bros. to Woodbury, June 13, 1839, *U. S. C. Ap.*, 428, 1276.
- International law defines territorial waters as defined by 1818 treaty, 1257.
- International law on "bays," 1320.
- International law writers cited: American 3-mile limit contention not supported: Farnham, 1: 25, Gould, pp. 9-10, 1339; Halleck, Kent, Taylor, Wheaton, 1338.
- International law writers cited by United States to support 3-mile limit are later than 1818, 1329.
- Interpretation of treaties by conduct of nations, 1251.
- Jaseur incident, Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 66, 1259.
- Jurisdiction, broad British claims of, United States acquiesced in, up to 1783, *U. S. A.* 121, 1322.
- Jurisdiction, Grotius' rule, 1331; Alaskan boundary arbitration, United States argument, 1332; Arbitrator Morgan in Behring Sea arbitration, 1331-2; case of "Alleganean," 1330, 1332; followed by United States Attorney General, *B. C. Ap.*, 55, 1330.
- Jurisdiction over fisheries, American claim, Behring Sea arbitration, *Proceedings* 9: 156, 1323.
- Juristic and geographical meanings of "bay," 1320.
- Juristic meaning of bays nonexistent prior to 1818, 1320.
- Keats, Bathurst to, June 17, 1815, *B. C. Ap.*, 63, "dominions" synonymous with "possessions" and "territories," 1254.
- Kent's Commentaries: American 3-mile contention not supported, 1338.
- Delaware Bay case, 1335.
- LAMMASCH: Bay within Bay of Fundy, 1241. Character of bay determined by general configuration, 1331. Discussion with Warren re "Triangle," 1248. Franco-American controversy concerned treaty coast, 1274. Right to dry and cure limited to treaty coast, 1271. Treaties of 1794 and 1806 compared, 1326-7.
- Landsdowne to Granville, June 8, 1886, *B. C. Ap.*, 318, revision of Canadian circular instructions, 1313.
- Lawrence, Malmesbury to, Aug. 13, 1852, *U. S. C. Ap.*, 522, instructions to British admiral, 1307.
- Lawrence to Webster, Aug. 13, 1852, *B. C. Ap.*, 180, seizures to be confined within 3-mile limit, 1307.
- Leavitt Bros. to Woodbury, June 13, 1839, *U. S. C. Ap.*, 428, request for instructions to fishermen, 1276.
- Liberties granted in 1783 were renounced in 1818, 1257.
- "Liberty" and "right," distinction, Webster's incomplete memorandum, *U. S. C. Ap.*, 527, 1299.
- Maces Bay, 1282.
- Mackerel, plenty on American coast until 1836, 1271.
- Malmesbury, Crampton to: Aug. 2, 1852, *B. C. Ap.*, 156, Webster acquiesces in British construction, 1293. Aug. 9, 1852, *B. C. Ap.*, 168, Fillmore disagrees with Webster, 1295.
- Malmesbury to Crampton: Aug. 11, 1852, *B. C. Ap.*, 172, instructions long-standing, 1306. Sept. 24, 1852, *B. C. Ap.*, 197, denies statement re 3-mile limit attributed to him by Lawrence, 1307-8.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- Malmesbury to Lawrence, Aug. 13, 1852, *U. S. C. Ap.*, 522, instructions to British admiral, 1307.
- Marcy applied "bay" to all indentations, 1264.
- Marcy espoused fishermen's theory, 1236.
- Marcy, Rush to, July 18, 1853, *U. S. C. Ap.*, 549, supports fishermen's theory, 1263.
- Marcy to Rush, July 6, 1853, *U. S. C. Ap.*, 549, British construction changed at colonial request, 1309.
- Marine league, Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 67, 1260.
- de Martens, G. F., common-shot rule, 1329.
- Minas Basin, 1282.
- Miscou, Point, 1304-5.
- Modality for drawing headland line, 1231.
- Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 66, Jaseur incident, 1259.
- Morgan, arbitrator, Behring Sea arbitration, Grotius' rule of jurisdiction, 1331-2.
- Negotiations of 1806, 3-mile limit not accepted, 1326.
- New Brunswick, minute executive council, June 20, 1845, *B. C. Ap.*, 149, objections to opening bays, 1309.
- Nova Scotia, attorney general of, memorandum, Sept. 17, 1844, *B. C. Ap.*, 137, exclusion applies to outer as well as inner bays, 1282.
- Oswald, *B. C. C. Ap.*, 87, fishing rights in Gulf of St. Lawrence, 1268.
- Paine's instructions not printed, 1233.
- Paine's report, *B. C. Ap.*, 121, origin of fishermen's theory, 1277-8.
- Palmerston, Stevenson to, Mar. 27, 1841, *B. C. Ap.*, 125, no disputes prior to 1841, 1279.
- Parris, Thayer to, July 20, 1839, *U. S. C. Ap.*, 426, refusal to furnish shelter in Bay of Fundy, 1275.
- Perry's admission: Campbell to Seymour, Aug. 26, 1852, *B. C. Ap.*, 195, 1305. Seymour's memorandum, *B. C. Ap.*, 192, 1304. Seymour to secretary of admiralty, July 21, 1853, *B. C. Ap.*, 202, 1306.
- Perry's instructions not printed, 1306.
- Phelps, Bayard to, Nov. 15, 1886, *B. C. Ap.*, 357, proposal to settle differences, British position unchanged, 1318-20.
- "Possessions" and "territories" synonymous with "dominions:" Bathurst to Keats, June 17, 1815, *B. C. Ap.*, 63, 1254. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 1254.
- President, Vail to, Aug. 14, 1839, *U. S. C. Ap.*, 438, instructions for Messrs. Leavitt, 1276.
- Regulations practically agreed to by Americans, Stanley to Falkland, Nov. 28, 1842, *U. S. C. Ap.*, 1046, 1279-80.
- Relaxation of British position, Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 146, 1258.
- Relaxation of rule in case of Bay of Fundy: Aberdeen to Everett, Mar. 10, 1845, *B. C. Ap.*, 141, 1285-6. Falkland to Stanley, Sept. 17, 1844, *B. C. Ap.*, 136, 1283. Sabine's report, *U. S. C. Ap.*, 1230, 1287-9.
- "Right" and "liberty," distinction, Webster's incomplete memorandum, *U. S. C. Ap.*, 527, 1299.
- Right to fish in territorial waters not dependent on grant, Webster's incomplete memorandum, *U. S. C. Ap.*, 527, GRAY, 1300.
- Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, Canadian customs circular, 1316-17.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

Rush and Gallatin to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, fishermen's theory supported, 1261-2.

Rush applied "bay" to all indentations, 1264.

Rush, Marcy to, July 6, 1853, *U. S. C. Ap.*, 549, British construction changed at colonial request, 1309.

Rush to his executors, Dec., 1854, *U. S. C. Ap.*, 547, British position adhered to, 1308.

Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, supports fishermen's theory, 1263.

Russell, Adams to, 1822, *B. C. C. Ap.*, 165, 3-mile limit not accepted prior to 1783, 1321-2.

Russia, claim of in 1821, Behring Sea Arbitration, *Moore, Dig. I.* 890, 1324-6.

Ryswick, treaty of, 1697, 3-mile limit not accepted, 1321.

Sabine's report: Bays renounced are those which might be entered, *U. S. C. Ap.*, 1273, 1237. Relaxation of rule in case of Bay of Fundy, *U. S. C. Ap.*, 1230, 1237-89; Everett's arrangement an abandonment of whole matter, 1290.

St. John Bay, 1282.

St. Lawrence, gulf of: Fishing rights in, Oswald, *B. C. C. Ap.*, 87, 1268.

Rights in Gulf of, Strachey to Townsend, Nov. 8, 1882, *B. C. Ap.*, 84, 1267-8. Three-mile limit in, 1333. Treaty of 1783, 1266-7.

St. Mary's Bay, 1282.

Seizures in 1852 repudiated by colonial governments, 1230.

Seizures to be confined within 3-mile limit, Lawrence to Webster, Aug. 13, 1852, *B. C. Ap.*, 180, 1307.

Senate discussion of fisheries, Webster to Fillmore, Aug. 4, 1852, *U. S. C. C. Ap.*, 166, 1294-5.

Seward in Senate, Aug. 14, 1852, *B. C. Ap.*, 181, Webster's notice, 1297.

Seymour, Campbell to, Aug. 26, 1852, *B. C. Ap.*, 195, Perry's admission, Bay of Chaleur, George's Bay, 1305.

Seymour's memorandum, *B. C. Ap.*, 192, Perry's admission of British position, 1304.

Seymour to Secretary of Admiralty, July 21, 1853, *B. C. Ap.*, 202, instructions to British cruisers during 1845-52, 1301; Perry's admission, 1306.

"Shelter argument" a desperation argument, 1237.

Shelter refused in Bay of Fundy, Thayer to Parris, July 20, 1839, *U. S. C. Ap.*, 426, 1275.

Shelter theory: Basis of fishermen's theory, 1237. Cass in United States Senate, *B. C. Ap.*, 160, 1294. Davis in United States Senate, *B. C. Ap.*, 167, 1294. Dobbin to Shubrick, July 14, 1853, *U. S. C. C. Ap.*, 169, 1302-3.

Shores, 3-mile limit measured from bays or, "fishermen's theory," 1234.

Shubrick, Dobbin to, July 14, 1853, *U. S. C. C. Ap.*, 169, shelter theory, fishermen's theory, instructions, 1302-3.

Shubrick to Dobbin: Aug. 7, 1853, *U. S. C. C. Ap.*, 176, instructions, 1303-4. Aug. 16, 1853, *U. S. C. C. Ap.*, 173, Seymour's instructions, 1304.

Soulé, in Senate, Aug. 12, 1852, *B. C. Ap.*, 172, 174-5, territorial theory, 1241-2, 1296.

Spain, treaties of. *See* Treaties cited.

Stanley, Falkland to, Sept. 17, 1844, *B. C. Ap.*, 136, relaxation of rule in regard to Bay of Fundy, 1233.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- Stanley to Falkland: Nov. 28, 1842, *U. S. C. Ap.*, 1046, regulations practically agreed to by Americans, 1279–80. May 19, 1845, *B. C. Ap.*, 146, relaxation of British position, 1258. Sept. 17, 1845, *B. C. Ap.*, 151, seizure of "Argus" as evidence of headland theory repudiated, 1229–30.
- Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 125, no disputes prior to 1841, 1279.
- Strachey to Townsend, Nov. 8, 1882, *B. C. C. Ap.*, 84, rights in Gulf of St. Lawrence, 1267–8.
- Taylor, American 3-mile contention not supported, 1338.
- Territorial bay: More than 6 miles wide, 1240. Defined, 1240.
- Territorial and fishermen's theories, practical difference: FITZPATRICK, 1245. *U. S. A.* 145, 146, 148, 193, 1243–46.
- Territorial line established by agreement in Fuca Straits, 1257.
- Territorial theory: Difficulties of, 1240. Means 3 miles from territorial bays, 1239. Not mentioned in Webster's incomplete memorandum, *U. S. C. Ap.*, 527, 1298. Soulé, in Senate, Aug. 12, 1852, *B. C. Ap.*, 172, 174–5, 1241–2, 1296. Supported by United States at Halifax Commission in 1877, 1237, 1239.
- Territorial waters: Defined in 1818 treaty as in international law, 1257. Right to fish in, not dependent on grant, Webster's incomplete memorandum, *U. S. C. Ap.*, 527, GRAY, 1299.
- Territoriality not involved in "fishermen's" theory, 1234.
- "Territories" and "possessions" synonymous with "dominions:" Bathurst to Keats, June 17, 1815, *B. C. Ap.*, 63, 1254. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 1254.
- Thayer to Parris, July 20, 1839, *U. S. C. Ap.*, 426, refusal to furnish shelter in Bay of Fundy, 1275.
- Three league limit recognized by United States Congress, *B. C. C. Ap.*, 18, 19, 21, 23, 29, 1322.
- Three-mile limit: Accepted by English municipal courts prior to 1818, 1320–1. American contention not supported by text writers: Farnham, 1:25, Gould, pp. 9–10, 1339; Halleck, Kent, Taylor, Wheaton, 1338. Denial of statement attributed to Malmesbury by Lawrence, Malmesbury to Crampton, Sept. 24, 1852, *B. C. Ap.*, 197, 1307–8. In Gulf of St. Lawrence, 1333. International acceptance of, FITZPATRICK, 1320. Measured from bays or from shores, "fishermen's theory," 1234. Not accepted prior to 1783: 1320; 1697, treaty of Ryswick, 1321; 1713, treaty of Utrecht, 1321; 1763, France-Great Britain, treaty, 1321; Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 75, 1323; Adams to Russell, 1822, *B. C. C. Ap.*, 165, 1321–2; Castlereagh, Adams to, Jan. 22, 1816, *B. C. Ap.*, 75, 1323; Foster, Halifax commission, *B. C. C. Ap.*, 183, 1322; Halifax commission, Foster at, *B. C. C. Ap.*, 183, 1322; jurisdiction, broad British claims to, United States acquiesced in, up to 1783, *U. S. A.*, 121, 1322; Russell, Adams to, 1822, *B. C. C. Ap.*, 165, 1321–2; Ryswick, treaty of, 1697, 1321; 3-league limit recognized by United States Congress, *B. C. C. Ap.*, 18, 19, 21, 23, 29, 1322. Not accepted prior to 1818: Alaskan Boundary Arbitration, United States argument, Grotius' rule of jurisdiction, 1332; "Alleganean," case of, Grotius' rule of jurisdiction, 1330, 1332; bays would be included in 5-mile limit, treaty of 1806, FITZPATRICK, 1328; Behring Sea Arbitration, Morga, arbitrator, Grotius' rule of jurisdiction, 1331–2; cannon-shot rule, G. F. de Martens, 1329; Delaware Bay case, 1326; Grotius' rule of jurisdiction followed by United States Attorney General, *B. C. Ap.*, 55, 1330;

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- international law writers cited by United States to support 3-mile limit are later than 1818, 1329; LAMMASCH, treaties of 1794 and 1806 compared, 1326-7; negotiations of 1806, 1326. Seizures to be confined within, Lawrence to Webster, Aug. 13, 1852, *B. C. Ap.*, 180, 1307.
- Three miles from coast line is fishermen's theory, 1239.
- "Three miles from shore" a mere phrase, 1238.
- Three miles from territorial bays is territorial theory, 1239.
- Townsend, Strachey to, Nov. 8, 1882, *B. C. C. Ap.*, 84, rights in Gulf of St. Lawrence, 1267-8.
- Treaties cited: 1686, France-Great Britain, *B. C. Ap.*, 6, "bay," 1231. 1697, treaty of Ryswick, 3-mile limit not accepted, 1321. 1713, Utrecht, France-Great Britain, 3-mile limit not accepted, 1321. 1763, Spain-France-Great Britain, treaty, 3-mile limit not accepted, 1321. 1778, United States-France, *U. S. C. Ap.*, 92, "bays," 1232. 1783, United States-Great Britain, first draft, *B. C. C. Ap.*, 71, 1267; second draft, *B. C. C. Ap.*, 86, 1268; Gulf of St. Lawrence, 1266-7. 1794, United States-Great Britain, *B. C. Ap.*, 23, "bays," cannon-shot rule, 1232.
- Treaties of 1794 and 1806 compared, LAMMASCH, 1326-7.
- Treaty coast: Franco-American controversy concerned, LAMMASCH, 1274. Right to dry and cure limited to, LAMMASCH, 1271.
- "Triangle": Difficulties of the, 1241, 1246-49. Discussion with Warren, LAMMASCH, 1248.
- United States acquiesced in British claims to broad jurisdiction up to 1783, *U. S. A.*, 121, 1322.
- United States argument, Alaskan Boundary Arbitration, Grotius' rule of jurisdiction, 1332.
- United States claim, Alaskan Boundary Arbitration, *Proceedings*, 4: 32, 1336-8.
- United States has been inconsistent, 1232-35, 1242.
- United States, treaties of. See Treaties cited.
- Utrecht, treaty of. See Treaties cited.
- Vail to Chauncey, Aug. 29, 1839, *U. S. C. Ap.*, 441, instructions for "Grampus," 1276.
- Vail to President, Aug. 14, 1839, *U. S. C. Ap.*, 438, instructions for Messrs. Leavitt, 1276.
- Warren presupposes existence of a bay, 1249-50.
- Warren's argument on difficulty of drawing headland line unfounded, 1231.
- "Washington," approving Everett's position in re, Calhoun to Everett, July 5, 1844, *B. C. Ap.*, 135, 1233.
- Webster, Fillmore disagrees with, Crampton to Malmesbury, Aug. 9, 1852, *B. C. Ap.*, 163, 1295.
- Webster, Fillmore to, July 20, 1852, *U. S. C. C. Ap.*, 160, negotiations with Mr. Crampton, 1292-3.
- Webster, Lawrence to, Aug. 13, 1852, *B. C. Ap.*, 180, seizures to be confined within 3-mile limit, 1307.
- Webster to Fillmore, Aug. 4, 1852, *U. S. C. C. Ap.*, 166, Senate discussion of fisheries, 1294-5.
- Webster's incomplete memorandum, *U. S. C. Ap.*, 527: 1296; bays renounced are those which might be entered, *U. S. C. Ap.*, 530, 1237; GRAY, right to fish in territorial waters not dependent on grant, 1300; neglects both fishermen's and territorial theories, 1298; "right" and "liberty," distinction, 1299.

Ewart, John S., K. C.—Continued.

Question 5—Continued.

- Webster's notice: July 6, 1852, *B. C. Ap.*, 152, agrees with British view, 1235, 1291, 1293. Seward in Senate, Aug. 14, 1852, *B. C. Ap.*, 181, 1297.
 West, Bayard to, May 20, 1886, *B. C. Ap.*, 302, relates to commercial privileges only, 1310-11.
 West, Roseberry to, July 23, 1886, *U. S. C. Ap.*, 823, Canadian customs circular, 1316-17.
 Wheaton, American 3-mile rule contention not supported, 1338.
 Woodbury, Leavitt Bros. to, June 13, 1839, *U. S. C. Ap.*, 428, request for instructions to fishermen, 1276.

Question 7, pp. 1361-1367. (July 18, 1910.)

- Aberdeen, Everett to, Mar. 25, 1845, *B. C. Ap.*, 144, geographical advantages of colonial fishermen, 1364.
 Advantages, geographical, of colonial fishermen, 1364; Everett to Aberdeen, Mar. 25, 1845, *B. C. Ap.*, 144, 1364.
 Bait: Prohibition of sale not recent, 1365-7. Purchase of, an industrial advantage, 1365. Sale of, a commercial privilege said to be involved, 1362.
 Commercial privileges: Alleged to be involved here are sale of bait, and of herring, 1362. Industrial advantages, distinction, 1363-5. Not concerned, 1361.
 Everett to Aberdeen, Mar. 25, 1845, *B. C. Ap.*, 144, geographical advantages of colonial fishermen, 1364.
 Geographical advantages of colonial fishermen, 1364; Everett to Aberdeen, Mar. 25, 1845, *B. C. Ap.*, 144, 1364.
 Herring, sale of, a commercial privilege said to be involved, 1362.
 Industrial advantage: Commercial privileges, distinction, 1363-5. Pribyloff Islands, United States position, 1365. Purchase of bait is, 1365.
 Pribyloff Islands, United States position re industrial advantages, 1365.
 Reciprocal arrangements of 1830 not involved, 1361.
 Scope of question, 1361.
 Treaty of 1871, article 29 not involved, 1361.

Finlay, Right Honorable Sir Robert Bannatyne.

Introduction, pp. 6-23. (June 6, 1910.)

- Question 1. General remarks, 11-14; servitudes, 7-8.
 Question 2. General remarks, 14-15.
 Question 3. General remarks, 15-16.
 Question 4. General remarks, 16.
 Question 5. General remarks, 16-20; bays, 8; U. S. contention as to bays, 17-18.
 Question 6. General remarks, 20-21.
 Question 7. General remarks, 21-23.

Historical résumé, pp. 23-294. (June 6, 7, 9, 10, 13, 1910).

- Aberdeen, Everett to: Aug. 10, 1843, *B. C. Ap.*, 130, "Washington," 146.
 May 25, 1844, *B. C. Ap.*, 133-4, shelter in Bay of Fundy, 150. May 25, 1844, *B. C. Ap.*, 133-4, Bay of Fundy, 148. Oct. 9, 1844, *B. C. Ap.*, 140, "Argus," seizure of, 153. Mar. 25, 1845, *B. C. Ap.*, 142-3, Bay of Fundy, "Argus," 154.
 Aberdeen to Everett: Apr. 15, 1844, *B. C. Ap.*, 132-3, bays, 3-mile limit, "Washington," 147-8. Mar. 10, 1845, *B. C. Ap.*, 141, Bay of Fundy, seizure of "Washington," 153. Apr. 21, 1845, *B. C. Ap.*, 145, Bay of Fundy, 154-5.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Abrogation of treaty of 1783 by war: 62. Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 72-76, 81. Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 64, 73. Bathurst to Adams, Oct. 30, 1815, *B. C. Ap.*, 69, 78-9. Gallatin and Rush to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, 91. Castlereagh to Robinson and Goulburn, Aug. 24, 1818, *B. C. Ap.*, 85, 84. Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549-557, 177. U. S. contention, 59. Webster's unfinished draft, 1852, *U. S. C. Ap.*, 532, 65.
- Acquiescence and dominion ground for jurisdiction, 43.
- Adams, Bathurst to, Oct. 30, 1815, *B. C. Ap.*, 69: bays, 77, abrogation of treaty of 1783, 78-9.
- Adams-Bathurst correspondence of 1815, 67-81.
- Adams, Gallatin and Rush to, Oct. 20, 1818, *B. C. Ap.*, 94, abrogation of 1783 treaty by war, 91.
- Adams' Journal, Nov. 28, 29, 1782, *B. C. C. Ap.*, 103-4, fishery article, 34-5.
- Adams' memoirs, Nov. 7, 1814, *B. C. C. Ap.*, 137, 138, 140, treaty of 1814, 60-1.
- Adams, Shepley to, Nov. 16, 1824, *U. S. C. Ap.*, 353, Bay of Fundy seizures, 121-23.
- Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, exclusion of American fishermen from coasts, nature of rights, 74-5.
- Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 72-6, abrogation of treaty of 1783, 81; "liberty" and "right," 82.
- Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 83-5, instructions, bays, 52.
- Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 64: reporting conversation with Bathurst *re* bays and maritime jurisdiction, 71; abrogation of 1783 treaty by war, 73.
- Adams to Rush, June 27, 1823, *B. C. Ap.*, 107, French exclusive rights, 109-10.
- Adams to Russell: May 3, 1822, *B. C. C. Ap.*, 161, effect of war on treaty of 1783; maritime jurisdiction, 53; 1822, *B. C. C. Ap.*, 163, maritime jurisdiction, 54-5.
- Addington, Brent to, Sept. 8, 1824, *U. S. C. Ap.*, 334, evidence, Bay of Fundy seizures, 117.
- Admiralty, Lords of, Cardwell to, Apr. 12, 1866, *B. C. Ap.*, 221, bays, regulations, 205.
- Agreement between negotiators, 1818, unsupported by Webster's notice, 163.
- American colonies, independent power in 1782, 29.
- American-Franco controversy, 1821-24. *See* Franco-American controversy.
- American position, 1844, indefinite *re* 3-mile limit, 149.
- Americans, regulations against: *Canada*: 1868, *B. C. Ap.*, 628, 133; 1870, *B. C. Ap.*, 630, 133; 1886, *B. C. Ap.*, 631-2, 133; 1886, Revised Statutes, *B. C. Ap.*, 632-4, 133-4. *New Brunswick*: 1853, *B. C. Ap.*, 623, 133. *Prince Edward Island*: 1843, *B. C. Ap.*, 617, 133.
- Americans, statute to restrain, Nova Scotia, Mar. 12, 1836, *B. C. Ap.*, 613, 132-3.
- Argus, seizure of: 152. Arbitration of, 181. Everett to Aberdeen: Oct. 9, 1844, *B. C. Ap.*, 140, 153; Mar. 25, 1845, *B. C. Ap.*, 142-3, 154. Everett to Buchanan, Apr. 23, 1845, *B. C. Ap.*, 145, 155.
- Award in "Washington" case, by Bates, Aug. 8, 1856, *B. C. Ap.*, 216, 179.
- Babson, Evarts to, Aug. 5, 1879, *U. S. C. Ap.*, 673, right to regulate, 267-8.
- Bacon to Bryce, Feb. 21, 1909, *U. S. C. Ap.*, 9, Bay of Fundy excluded from present arbitration, 178-9.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- Baird's report and proposals to save fish, Dec. 2, 1872, *B. C. C. Ap.*, 181-2, 246.
- Bait: 288. Bond-Blaine convention, 1891, *B. C. Ap.*, 46, 289. *Newfoundland*: statutes regarding sale of: Feb. 21, 1887, *B. C. Ap.*, 711; May 9, 1888, *B. C. Ap.*, 712; June 1, 1889; *B. C. Ap.*, 713; 1893, foreign fishing vessels act, *B. C. Ap.*, 780, 289; 1905, foreign fishing vessels act, *B. C. Ap.*, 757, 290.
- Baker, Bathurst to, Sept. 7, 1815, *B. C. Ap.*, 64, bays and maritime jurisdiction, 70.
- Baker to Monroe, Aug. 31, 1815, *U. S. C. Ap.*, 264, denies approval of Jaseur incident, 67-8.
- Bank and inshore fisheries differ, 83, 116.
- Bannerman to Newfoundland House of Assembly, French rights, *U. S. C. Ap.*, 262, 106.
- Barrington Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 283.
- Bates' award in "Washington" case, *B. C. Ap.*, 216, 179.
- Bathurst, Adams to, Sept. 25, 1815, *U. S. C. Ap.*, 268, exclusion of Americans from coast; nature of rights, 74-5.
- Bathurst-Adams correspondence of 1815, 67-81.
- Bathurst to Adams, Oct. 30, 1815, *B. C. Ap.*, 69; bays, 77; abrogation of 1783 treaty, 78-9.
- Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, bays and maritime jurisdiction, 70.
- Bathurst to Keats, June 17, 1815, *B. C. Ap.*, 63, instructions to exclude Americans during war, 66.
- "Bay," definition might be compromised, Kimberley to Lisgar, Feb. 16, 1871, *B. C. Ap.*, 246, 213.
- Bayard-Chamberlain treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 281-288. *See also* Chamberlain-Bayard treaty.
- Bays: Aberdeen to Everett, Apr. 15, 1844, *B. C. Ap.*, 132-3, 147-8. Adams, instructions to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 83-5, 52. Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 64, reporting conversation with Bathurst, 71. American argument, *U. S. A. 137, 139*, 68-9. Americans fishing in bays, Nova Scotia, address to the King, Feb. 24, 1836, *U. S. C. Ap.*, 1040-1, 131-2. Attorney General's report, in letter of Jefferson, May 14, 1793, *B. C. Ap.*, 54, 40. Bathurst to Adams, Oct. 30, 1815, *B. C. Ap.*, 69, 77. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 70. Barrington Bay, 283. Bates' award in "Washington" case, *B. C. Ap.*, 216, 180. Cape Cod Bay, 175. Cardwell to Lords of Admiralty, Apr. 12, 1866, *B. C. Ap.*, 221, 205-7. Chaleurs Bay, 42, 126, 128, 157, 163, 164, 282. Chedabucto Bay, 284. Chesapeake Bay, 43, 175, 222. Conception Bay Case, *L. R. 2 App. Cases (1877) 394*, 95-102. Decision to uphold British contention, Falkland to Stanley Sept. 17, 1845, *B. C. Ap.*, 151, 157. Delaware Bay: 175, 182, 222; seizure of "Grange," 39; Attorney General's report in letter of Jefferson, May 15, 1793, *B. C. Ap.*, 54, 40; under treaty of 1854, 182. "Dominion" and "acquiescence" ground for jurisdiction, 43. Egmont Bay, 283. Falkland to Stanley, Sept. 17, 1844, *B. C. Ap.*, 136, 151-2. Fortune Bay, 283. Fundy, Bay of: 103, 143, 148, 169, 170-1; seizures in, 1821-24, 114-126; Thayer's report *re* Bay of Fundy, July 20, 1839, *U. S. C. Ap.*, 426-7, 134-5. *See also* Seizures in Bay of Fundy and Fundy, Bay of. George Bay, 165, 166. Instructions of Canada, May 14,

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- 1870, *U. S. C. Ap.*, 582, 207-8. Islands, Bay of, French interference, 112. Joint commission to delimit, 212. Malmesbury to Crampton: Aug. 10, 1852, *B. C. Ap.*, 169, 169; Sept. 16, 1852, *B. C. Ap.*, 196, 174-5. Mira Bay, 284. Miramichi Bay, 283. Not concerned in instructions to Gallatin and Rush, *B. C. Ap.*, 83, 84. "Of Her Majesty's dominions," Kimberley to Young, Oct. 10, 1870, *U. S. C. Ap.*, 628-9, 212. Opinion of law officers, 144. Placentia Bay, 284. Port au Port, French interference in bay of, 112. Relaxation of British position, Colebrooke's report. *B. C. Ap.*, 148, 156-7. St. Ann's Bay, 283. St. George, French interference in bay of, 112. St. Mary's Bay, 284. St. Peter's Bay, 284. Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181, 172. Seymour's conversation with Perry, Aug. 17, 1852, *B. C. Ap.*, 191-2, 164-5. Six-mile bays: first mentioned by U. S., 172; Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, 209; instructions of Canada, June 27, 1870, *U. S. C. Ap.*, 611, 210; opinion of provincial governors, 156; Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145, 156. Stanley's proposal to relax British position, no argument for U. S., 156, 158. Territorial coast belt and bays, distinction, GRAY, 71. Ten-mile rule, 208-9. Treaty of 1806 did not consider, 51. U. S. Senate Committee on Foreign Relations, minority report on Chamberlain-Bayard treaty, *B. C. Ap.*, 451, 286. Webster's notice, July 6, 1852, *B. C. Ap.* 152-3, 161-3.
- Blaine-Bond convention, 1891, *B. C. Ap.*, 45, 289.
- Blaine, Thornton to, May 28, 1871, *U. S. C. Ap.*, 736, closing Fortune Bay controversy, 278.
- Blaine to Thornton, May 28, 1871, *U. S. C. Ap.*, 737, closing Fortune Bay controversy, 278.
- Bond-Blaine convention, 1891, *B. C. Ap.*, 45, 289.
- Bond-Hay convention, Nov. 8, 1902, *B. C. Ap.*, 46, 290.
- Boutwell's circulars: First circular, June 9, 1870, *B. C. Ap.*, 237. Second circular, Mar. 6, 1872, *B. C. Ap.*, 249-250, 213-219. Admit right of Great Britain to regulate, 215-16, 255. Apply to treaty coast, 219.
- Brent to Addington, Sept. 8, 1824, *U. S. C. Ap.*, 334, evidence in Bay of Fundy seizures, 117.
- British gave up contention as to Bay of Fundy, 151.
- British position in 1838 as to regulations, 138.
- British proposition for fishery article, treaty of 1818, *B. C. Ap.*, 89, 85-6.
- Bryce, Bacon to, Feb. 21, 1909, *U. S. C. Ap.*, 9, Bay of Fundy excluded from present arbitration, 178-9.
- Buchanan, Everett to, Apr. 23, 1845, *B. C. Ap.*, 145, seizure of "Washington" and "Argus," Bay of Fundy, 155.
- Campbell to Seymour: Aug. 15, 1852, *B. C. Ap.*, 190, mackerel fishery, 128. Aug. 26, 1852, *B. C. Ap.*, 195, Perry's position on treaty violations, 165-6.
- Canada: Ceded to Great Britain, 1763, 25. Instructions regarding regulations and bays, May 14, 1870, *U. S. C. Ap.*, 582, 207-8. Instructions as to 3-mile limit and 6-mile bays, June 27, 1870, *U. S. C. Ap.*, 611, 210. Regulations against Americans: 1868, *B. C. Ap.*, 628, 133; 1870, *B. C. Ap.*, 630, 133; 1886, *B. C. Ap.*, 631-2, 133; 1886, Revised Statutes, *B. C. Ap.*, 632-4, 133-4.
- Canadian fishery, British case before Halifax commission, *U. S. C. C. Ap.*, 525-546, 233-248.
- Canadian order in council, Jan. 8, 1870, *B. C. Ap.*, 230, licenses discontinued, 204.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Canadian statutes: 1868, *B. C. Ap.*, 628, regulations, 133; 1870, *B. C. Ap.*, 630, regulations, 133; 1886, *B. C. Ap.*, 631-2, regulations, 133; 1886, Revised Statutes, *B. C. Ap.*, 632-4, regulations, 133-4.
- G. Canning, S. Canning to, May 6, 1824, *B. C. Ap.*, 112-13, U. S. rights on French coast, 111-12.
- Canning, Rush to, May 3, 1824, *B. C. Ap.*, 111, U. S. rights on French coast, 111.
- S. Canning to G. Canning, May 6, 1824, *B. C. Ap.*, 112-13, U. S. rights on French coast, 111-12.
- Canso, Gut of, 143, 165, 166.
- Cape Cod Bay, 175.
- Cardwell to Lords of Admiralty: Apr. 12, 1866, *B. C. Ap.*, 221, bays, regulations, 205. Thornton to Fish re Cardwell letter, June 3, 1870, *U. S. C. Ap.*, 597, 219-220. Fish to Thornton re Cardwell letter, June 8, 1870, *U. S. C. Ap.*, 609, 221. Lack of objection to, is admission of British position, 219.
- Cases cited: Conception Bay case, *L. R. 2 App. Cases (1877) 394*, 95-102; Queen v. Cunningham, *Bell's Crown Cases Reserved*, p. 72, 98-9.
- Castlereagh, Adams to, Jan. 22, 1816, *B. C. Ap.*, 72-6: abrogation of treaty of 1783; "liberty" and "right," 81-2.
- Castlereagh, exclusion of American fishermen during war, Apr. 16, 1816, *B. C. C. Ap.*, 176, 67.
- Castlereagh, Robinson to, Oct. 10, 1818, *B. C. Ap.*, 92, reasons for dropping British proposed fishery clause, 87.
- Castlereagh to Robinson and Goulburn, Aug. 24, 1818, *B. C. Ap.*, 85, abrogation of 1783 treaty by war, 84.
- Chaleurs Bay: 42, 163, 164. Admission to Americans, Colebrooke's report, *B. C. Ap.*, 148, 157. Campbell to Seymour, Aug. 15, 1852, *B. C. Ap.*, 190, 128. Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 282. Enforcement of regulations, 135. Lyman, 2:100, 126. Perry sent to, 163.
- Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 281-288. Barrington, Bay, 283. Chaleurs Bay, 282. Chedabucto Bay, 284. Egmont Bay, 283. Fortune Bay, 283. Mira Bay, 284. Miramichi Bay, 283. Modus vivendi, 285. Placentia Bay, 284. Regulations, 284. Report of Senate Committee on Foreign Affairs: majority report, *B. C. Ap.*, 435; minority report, *B. C. Ap.*, 451, 464, 474, bays, 286, character and value of fisheries, 92-3, maritime jurisdiction, 287. St. Ann's Bay, 283. St. Mary's Bay, 284. St. Peter's Bay, 284. Sir Charles Hamilton Sound, 283. Ten-mile rule, 282. Treaty rejected by United States, Aug. 23, 1888, 286.
- Chateaubriand, Gallatin to, Jan. 22, 1823, *B. C. Ap.*, 102; Mar. 14, 1823, *B. C. Ap.*, 103, French exclusive rights, 107-108.
- Chateaubriand to Gallatin, Feb. 28, 1823, *B. C. Ap.*, 102-3, French exclusive rights, 107-8.
- Chedabucto Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284.
- Chesapeake Bay: 43, 175, 222. Under treaty of 1854, 182.
- Clarendon, Crampton to: June 1855, *B. C. Ap.*, 206, regulations, Marcy's first circular, 185. Aug. 7, 1855, *B. C. Ap.*, 208, criticising Marcy's first circular, 186. Apr. 25, 1856, *B. C. Ap.*, 210, revision of Marcy's first circular, 189.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- Clarendon to Crampton, Oct. 11, 1855, *B. C. Ap.*, 208, Marcy's first circular, 187.
- Colebrooke's report, *B. C. Ap.*, 148, relaxation of British position regarding Chaleurs Bay, 156-7.
- Colonial governments and Imperial government held same view, 136-7.
- Commercial privileges, 230; not claimed before Halifax commission, 241-2, 252.
- Conception Bay: Case cited, *L. R. 2 App.*, *Cases (1877)*, 394, 95-102. Not on treaty coast, 101.
- "Concession" and "right" in Bay of Fundy, Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181, 170-7.
- Concessions of 1870 in exercise of jurisdiction were temporary, 211-12.
- Concessions of 1871, mutual, Evarts to President, May 17, 1880, *B. C. Ap.*, 280, 273.
- Continental Congress, proceedings in: Common right to fish, report of committee, *B. C. C. Ap.*, 12, 31-33. Independence prerequisite of negotiation, report of committee, Feb. 23, 1779, *B. C. C. Ap.*, 10, 30. Right in "common," report of committee, Jan. 8, 1782, *B. C. C. Ap.*, 28, 29, 32. Resolutions, *B. C. C. Ap.*, 20, 31.
- Control over fisheries, idea in 1782, 29.
- "Coral," seizure of, Malmesbury to Crampton, Aug. 10, 1852, *B. C. Ap.*, 169, 169.
- Correspondence preliminary to treaty of 1818, 68-83.
- Crampton, Clarendon to, Oct. 11, 1855, *B. C. Ap.*, 208, Marcy's first circular, 187.
- Crampton, Malmesbury to: Aug. 10, 1852, *B. C. Ap.*, 169, Bay of Fundy, seizure of "Coral," bays, 169. Sept. 16, 1852, *B. C. Ap.*, 196, bays, three-mile limit, 174-5. Sept. 24, 1852, *B. C. Ap.*, 197, errors in Lawrence's report of British position, 176.
- Crampton, Marcy to: Mar. 28, 1856, *B. C. Ap.*, 209, submits modified circular, 187. Apr. 24, 1856, *B. C. Ap.*, 210, copy of revised second circular, 189-90.
- Crampton, Sutton to, June 16, 1855, *B. C. Ap.*, 205, enforcement of regulations under treaty of 1854, 183-4.
- Crampton, Webster to, July 17, 1852, *B. C. Ap.*, 154, Webster's notice, 168.
- Crampton to Clarendon: June, 1855, *B. C. Ap.*, 206, regulations, Marcy's first circular, 185. Aug. 7, 1855, *B. C. Ap.*, 208, Marcy's first circular, 186. Apr. 25, 1856, *B. C. Ap.*, 210, revision of Marcy's first circular, 189.
- Crampton to Governor-General of Canada, June 28, 1855, *B. C. Ap.*, 206, regulations, 185.
- Crampton to Malmesbury: July 20, 1852, *B. C. Ap.*, 154, Fillmore's opinion, 168. Aug. 2, 1852, *B. C. Ap.*, 156, Webster's opinion, 163-4.
- Crampton to Sutton, June 27, 1855, *B. C. Ap.*, 205, Marcy's first circular, 184.
- Crew of American vessel: Newfoundlanders in: Foreign fishing vessels acts: 1905, *B. C. Ap.*, 757, 290; 1906, *B. C. Ap.*, 758, 290-1. Non-inhabitants of U. S. in, 288.
- Cunningham, Queen v., *Bell's Crown Cases Reserved*, p. 72, 98-9.
- Damages: Fortune Bay case, Evarts to Lowell, Feb. 4, 1881, *B. C. Ap.*, 290, 277-8; Granville to Lowell, Oct. 27, 1880, *B. C. Ap.*, 289, 275-77.
- Dana, before Halifax commission, *B. C. C. Ap.*, 188, mackerel fishery, 129.
- Debate in United States Senate in 1852, 169-174.
- Delaware Bay; 175-222. Described, 39-40. "Grange," seizure of, 39. Under treaty of 1854, 182.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- "Diligent," deposition of Ficket, master of, Bay of Fundy seizures, *U. S. C. Ap.*, 337, 118.
- "Dominion and acquiescence" ground for jurisdiction, 43.
- "Dotterel," seizures in Bay of Fundy, 116; statement of commander, *U. S. C. Ap.*, 374, 123; affidavits of British sailors, etc., *U. S. C. Ap.*, 380-406, 124.
- Drying fish, French rights 1763, 25.
- Egmont Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 283.
- Employment of Newfoundlanders in American crews, Newfoundland act 1906, *B. C. Ap.*, 758, 290-1.
- Employment of noninhabitants of United States in American crews, 288.
- "Escape," statement of master of, *U. S. C. Ap.*, 362, Bay of Fundy seizures, 123.
- Evarts' report, May 17, 1880, *B. C. Ap.*, 280: contrary to fact, 197-8; Marcy's second circular, 196; mutual concessions in 1871, Marcy circular, 273-5.
- Evarts to Babson, Aug. 5, 1879, *U. S. C. Ap.*, 673, right to regulate, 267-8.
- Evarts to Lowell, Feb. 4, 1881, *B. C. Ap.*, 290, Fortune Bay controversy, damages, 277-8.
- Evarts to Thornton, Mar. 2, 1878, *B. C. Ap.*, 268, Fortune Bay controversy, 256.
- Evarts to Welsh: Sept. 28, 1878, *B. C. Ap.*, 268, Fortune Bay controversy, regulations, 257-260. Aug. 1, 1879, *B. C. Ap.*, 272, municipal legislation, regulation, Fortune Bay controversy, 261-263.
- Everett, Aberdeen to: Apr. 15, 1844, *B. C. Ap.*, 132-3, bays, 3-mile limit, "Washington," 147-8. Mar. 10, 1845, *U. S. C. Ap.*, 141, Bay of Fundy, seizure of "Washington," 153. Apr. 21, 1845, *B. C. Ap.*, 145, Bay of Fundy, 154-5.
- Everett to Aberdeen: Aug. 10, 1843, *B. C. Ap.*, 130, "Washington," 146. May 25, 1844, *B. C. Ap.*, 133-4, Bay of Fundy, 148; shelter in Bay of Fundy, 150. Oct. 9, 1844, *B. C. Ap.*, 140, "Argus," seizure of, 153. Mar. 25, 1845, *B. C. Ap.*, 142-3, Bay of Fundy, "Argus," 154.
- Everett to Buchanan, Apr. 23, 1845, *B. C. Ap.*, 145, seizure of "Washington" and "Argus," Bay of Fundy, 155.
- Exclusion of American fishermen during war, 67. Bathurst to Governor Keats, June 17, 1815, *B. C. Ap.*, 63, 66. Castlereagh, Apr. 16, 1816, *B. C. Ap.*, 176, 67.
- Exclusion of American fishermen from coasts, Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, 74.
- Exclusive right of French, GRAY, 39.
- Falkland, Stanley to, May 19, 1845, *B. C. Ap.*, 145, 6-mile bays, 156.
- Falkland to Russell: Apr. 28, 1841, *U. S. C. Ap.*, 1043, asking opinion of law officers, 143. May 8, 1841, *B. C. Ap.*, 127, 3-mile limit, regulations, 140-3.
- Falkland to Stanley: Oct. 17, 1843, *B. C. Ap.*, 131, "Washington," 146-7. Sept. 17, 1844, *B. C. Ap.*, 136, bays, 151-2. Sept. 17, 1845, *B. C. Ap.*, 151, decision to uphold British contention as to bays, 157.
- "Fanny," incident of, 43-4.
- Fillmore on Law Officers' opinion, 168.
- Fillmore, opinion of President, Crampton to Malmesbury, July 20, 1852, *B. C. Ap.*, 154, 168.
- Fillmore to Webster, July 20, 1852, *B. C. Ap.*, 155, *modus vivendi*, 168.
- Fish, Thornton to: June 3, 1870, *U. S. C. Ap.*, 597, Cardwell's letter, 219-220. June 11, 1870, *B. C. Ap.*, 238, instructions to Imperial police vessels, 210-11.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

Fish to Thornton: June 8, 1870, *U. S. C. Ap.*, 609, Cardwell's letter, Wellesley's instructions, 221. June 30, 1870, *B. C. Ap.*, 239, acknowledges temporary character of 1870 instructions, 211. June 25, 1873, *B. C. Ap.*, 252, Newfoundland act making effective 1871 treaty, 225.

Fishery, character and value of, report of minority of Senate committee on Chamberlain-Bayard treaty, *B. C. Ap.*, 474, 92-3.

Fishing on banks not fishing in Bay of Fundy, 116.

FITZPATRICK: Coast opened up by 1854 treaty, 203. Liberty to prosecute freely sea fishery, Halifax commission, 236. Marcy's second circular, limitation of effect of, 198-9, 200.

Five-mile limit in nonratified treaty of Dec. 31, 1806, 48-52.

Foreign fishing vessels acts, Newfoundland, 1893, *B. C. Ap.*, 730, bait, 289; 1905, *B. C. Ap.* 757, 290.

Fortune Bay controversy: 1878-1882, 255-279. Blaine to Thornton, May 28, 1871, *U. S. C. Ap.*, 737, closing Fortune Bay controversy, 278. Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 283. Evarts to Lowell, Feb. 4, 1881, *B. C. Ap.*, 290, damages, 277-8. Evarts to President, May 17, 1880, *B. C. Ap.*, 280, 273-5. Evarts to Thornton, Mar. 2, 1878, *B. C. Ap.*, 268, 256. Evarts to Welsh: Sept. 28, 1878, *B. C. Ap.*, 268, right to regulate, 257-60; Aug. 1, 1879, *B. C. Ap.*, 272, municipal legislation, right to regulate, 261-3. Evidence before Halifax commission, 264-7. Granville to Lowell, Oct. 27, 1880, *B. C. Ap.*, 289, joint regulations, damages, 275-77. Salisbury to Hoppin, Apr. 3, 1880, *B. C. Ap.*, 278, "in common" as regards regulation, 268-73. Salisbury to Welsh: Aug. 23, 1878, *U. S. C. Ap.*, 650, report, 256; Nov. 7, 1878, *B. C. Ap.*, 271, right to regulate, 260-1. Thornton to Blaine, May 28, 1871, *U. S. C. Ap.*, 736, closing Fortune Bay controversy, 278.

Foster, Dwight, Halifax arbitration, *B. C. C. Ap.*, 182-3, maritime jurisdiction, 57; mackerel fishery, 129.

Fox, Palmerston to, Oct. 6, 1838, *B. C. Ap.*, 117, instructions as to regulations, 137-8.

France, treaties of. See Treaties cited.

Franco-American controversy during 1821-4, 103-113; origin, *U. S. C. C.*, 89, 103-4; evidence, *U. S. C. C. Ap.*, 105, 104, 105.

"Freedom," not from regulation, British case before Halifax commission, 249-50, 252.

French coast: 25. United States rights on: Rush to Canning, May 3, 1824, *B. C. Ap.*, 111; S. Canning to G. Canning, May 6, 1824, *B. C. Ap.*, 112-13, 111-12.

French exclusive rights: Adams to Rush, June 27, 1823, *B. C. Ap.*, 107, 109-10. Chateaubriand to Gallatin, Feb. 28, 1823, *B. C. Ap.*, 102-3, 107-8. Claim to exclusive fishing, 104-105. Gallatin to Chateaubriand, Jan. 22, 1823, *B. C. Ap.*, 102, Mar. 14, 1823, *B. C. Ap.*, 103, 107-108. Governor of Newfoundland to House of Assembly, *U. S. C. C. Ap.*, 262, 106. GRAY, 39. Perrier to Malmesbury, July 5, 1852, *U. S. C. C. Ap.*, 225, 105. Rush to Gallatin, Oct. 10, 1822, *B. C. Ap.*, 101, 106. Treaty of 1783, between France and Great Britain, *B. C. Ap.*, 11, 38.

French interference in Bay of Islands, Port au Port, and St. Georges Bay, 112.

French rights: Under treaty of Utrecht of 1713, 24, 25; under treaty of 1763, 25.

Fundy, bay of: 103, 143. Aberdeen to Everett, Mar. 10, 1845, and Apr. 21, 1845, *B. C. Ap.*, 141, 145, 153, 154-5. British gave up contention as to, 151.

Enforcement of regulations in, 135. Everett to Aberdeen, May 25, 1844,

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Mar. 25, 1845, *B. C. Ap.*, 133-4, 142-3, 148, 154. Everett to Buchanan, Apr. 23, 1845, *B. C. Ap.*, 145, 155. Excluded from present arbitration, Bacon to Bryce, Feb. 21, 1909, *U. S. C. Ap.*, 9, 178-9. Malmesbury to Crampton, Aug. 10, 1852, *B. C. Ap.*, 169, 169. Renunciation of British position not general, 155. "Right" and "concession" in opening, Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181, 170-71. Seizures in, during 1821-4, 114-126; *see also* Seizures in Bay of Fundy. Shelter in, Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133-4, 150. Thayer's report, July 20, 1839, *U. S. C. Ap.*, 426-7, 134-5.
- "Galeon," deposition of master and crew, Bay of Fundy seizures, *U. S. C. Ap.*, 341, 343, 356, 118.
- Gallatin and Rush, Adams to, July 28, 1818, *B. C. Ap.*, 83, instructions: bays, 52; do not concern bays, 84.
- Gallatin and Rush to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, abrogation of 1783 treaty by war, 91.
- Gallatin, Chateaubriand to, Feb. 28, 1823, *B. C. Ap.*, 102-3, French exclusive rights, 107-8.
- Gallatin, Rush to, Oct. 10, 1822, *B. C. Ap.*, 101, French exclusive rights, 106.
- Gallatin to Chateaubriand, Jan. 22, 1823, *B. C. Ap.*, 102, Mar. 14, 1823, *B. C. Ap.*, 103, French exclusive rights, 107-8.
- Genet, Jefferson to, Nov. 8, 1793, re "Fanny," *B. C. Ap.*, 56, 43-4.
- George Bay, 165, 166.
- Goulburn and Robinson, Castlereagh to, Aug. 24, 1818, *B. C. Ap.*, 85, abrogation of 1783 treaty by war, 84.
- Governor-General of Canada, Crampton to, June 28, 1855, *B. C. Ap.*, 205, regulations, 185.
- "Grange" seizure of: 39. Jefferson's letter to French minister and report of Attorney General, May 15, 1793, *B. C. Ap.*, 54, 40-1.
- Granville, Thornton to: June 23, 1873, *B. C. Ap.*, 251, Newfoundland act making 1871 treaty effective, 224. June 30, 1873, *B. C. Ap.*, 252, regulations, act of Newfoundland making 1871 treaty effective, 226.
- Granville to Lowell, Oct. 27, 1880, *B. C. Ap.*, 289, Fortune Bay controversy, 275-77.
- Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, 3-mile limit, 6-mile bays, 209.
- Granville to West, July 15, 1882, *B. C. Ap.*, 293, vain efforts for *modus vivendi*, 278-9.
- GRAY: Distinction between territorial coast belt and bays, 71. Exclusive right of French, 39. Exemption from municipal regulations subsequent to 1871 treaty, 272.
- Great Britain asserts right to regulate, Halifax commission, 229.
- Great Britain, statutes of, *see* Statutes cited, *Imperial*.
- Great Britain, treaties of, *see* Treaties cited.
- Great Britain's position always same, 293.
- Grey-Root correspondence during 1905-7, 291.
- Gulliver's Hole, seizure in, 125.
- Gut of Canso, 143, 165, 166.
- Halifax arbitration (1877): 229-254. American argument concerning British position at, *U. S. A.*, 74-76, 231-232; is unfounded, 233-255, 264-269; as to right to regulate is erroneous, 233-241, 242, 255. British case: Canadian fisheries, *U. S. C. Ap.*, 525-546, 233-248; Newfoundland fisheries, *U. S.*

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- C. Ap.*, 546-555, 248-255. Commercial privileges not claimed, 241-2, 252. Dana, mackerel fishery, *B. C. C. Ap.*, 188, 129. FITZPATRICK, liberty to prosecute freely sea fishery, 236. Foster, Dwight, *B. C. C. Ap.*, 182-3, mackerel fishery, 57; maritime jurisdiction, 129. "Freedom" from regulation not admitted, 249-250, 252. Great Britain asserted right to regulate at, 229. United States' answer, *B. C. Ap.*, 257, 263, 241-2.
- Hamilton Sound, Sir Charles, 283.
- Hammond, Jefferson to, Nov. 8, 1793, *B. C. Ap.*, 57, the "Fanny," 44-5.
- Hay-Bond convention, Nov. 8, 1902, *B. C. Ap.*, 46, 290.
- "Headland" in law officers' opinion, 144.
- Henderson, partition of empire theory, 63-5.
- "Hero," statement of master, *U. S. C. Ap.*, 370, Bay of Fundy seizures, 123.
- Herring fisheries, 288.
- Hill, Thornton to, July 10, 1873, *B. C. Ap.*, 253, Newfoundland act making effective 1871 treaty, 226.
- Historical account of fishery controversy, Putnam's report, Apr. 16, 1888, *B. C. Ap.*, 427-34, 286.
- Hoppin, Salisbury to, Apr. 3, 1880, *B. C. Ap.*, 278, "in common" as regards regulation, Fortune Bay, 268-273.
- Hudson Bay, France cedes, treaty of Utrecht, *B. C. Ap.*, 6, 90.
- Iddesleigh, Phelps to, Dec. 3, 1886, *B. C. Ap.*, 362-3, proposals to settle fisheries difficulties, 281.
- Imperial government and colonial governments held same views, 136-7.
- Impressment: 45-6. Madison to Monroe and Pinckney, Feb. 3, 1807, *U. S. C. C. Ap.*, 97, 98, 48, 49.
- "In common:" As regards regulation, Salisbury to Hoppin, Apr. 3, 1880, *B. C. Ap.*, 278, 268-273. Report of committee, Continental Congress, Jan. 8, 1782, *B. C. C. Ap.* 28, 29, 32. Resolutions, Continental Congress, *B. C. C. Ap.* 20, 31.
- Independence prerequisite to treating for peace, *B. C. C. Ap.*, 38-69, 33-4; report of congressional committee, Feb. 23, 1779, *B. C. C. Ap.*, 10, 30.
- Inhabitants, persons not, employed by American vessels, 288.
- Inshore fisheries and bank fisheries distinct, 83.
- Instructions, Canadian: May 14, 1870, *U. S. C. Ap.*, 533, regulations, bays, jurisdiction, 207-8. June 27, 1870, *U. S. C. Ap.*, 611, 3-mile limit, 6-mile bays, 210.
- Instructions to commissioners, Adams', July 28, 1818, *B. C. Ap.* 83-5, bays, 52.
- Instructions to U. S. commissioners to France, Dec. 30, 1776, *B. C. C. Ap.*, 6, 30.
- Irrevocability of the fisheries concession, 75-6.
- Islands, Bay of, French interference in, 112.
- Jaseur incident, 67.
- Jay's treaty, 1794, article 25, *B. C. Ap.* 16, 45.
- Jefferson to Genet, Nov. 8, 1793, *B. C. Ap.* 56, re "Fanny," 43-4.
- Jefferson to Hammond, Nov. 8, 1793, *B. C. Ap.*, 57, the "Fanny," 44-5.
- Jefferson to Secretary of the Treasury, Sept. 8, 1804, *B. C. Ap.*, 59, maritime jurisdiction, 46.
- Jefferson to Ternant, May 15, 1793, *B. C. Ap.*, 54, Attorney General's report on "Grange" incident, bays, 40-1.
- Jeffreys' map, 36.
- Joint commission to delimit bays, 212.
- Joint regulations, difficulties in making, 268.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Jurisdiction: Concessions of 1870 temporary, 211-12. "Dominion and acquiescence" ground for, 43. Instructions of Canada, May 14, 1870, *U. S. C. Ap.*, 582, 208.
- Keats, Bathurst to, June 17, 1815, *B. C. Ap.*, 63, instructions to exclude fishermen during war, 66.
- Kimberley to Lisgar, Feb. 16, 1871, *B. C. Ap.*, 246, definition of "bay" may be compromised, 213.
- Kimberley to Young, Oct. 10, 1870, *U. S. C. Ap.*, 628-9, bay "of Her Majesty's dominions," 212.
- LAMMASCH: Marcy circular, regulations "enjoined" or "enforced" 193. Treaty and nontreaty coasts abolished by treaty of 1854, 199-200.
- Law officers' opinion, 144; Fillmore on, 168.
- Lawrence's report, Aug. 13, 1852, *B. C. Ap.*, 180, errors in, Malmesbury to Crampton, Sept. 24, 1852, *B. C. Ap.*, 197, 176.
- Leavitt, letter of Messrs., June 13, 1839, *U. S. C. Ap.*, 428, enforcement of regulations against Americans, 135.
- "Liberty" in Adams' draft of fishery article, Nov. 28, 29, 1782, *B. C. C. Ap.*, 103-4, 34-35.
- "Liberty" and "right," Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 72-6, 82.
- Liberty of fishing possessed by colonists as British subjects, 60.
- Liberty to prosecute freely sea fisheries, Halifax Commission, FITZPATRICK, 236.
- Licenses, 1866-1870, *U. S. C.*, 135-38, partly replaced expired 1854 treaty, 204.
- Licenses discontinued, Canadian order in council, Jan. 8, 1870, *B. C. Ap.*, 230, 204.
- Limitations on early British claims, 58.
- Lisgar, Kimberley to, Feb. 16, 1871, *B. C. Ap.*, 246, definition of "bay" suitable for compromise, 213.
- Long Island Sound, 175.
- Lowell, Granville to, Oct. 27, 1880, *B. C. Ap.*, 289, Fortune Bay controversy, joint regulations, damages to fishermen, 275-77.
- Lowell, Evarts to, Feb. 4, 1881, *B. C. Ap.*, 290, Fortune Bay controversy, damages, 277-8.
- Lyman: 2:100, Bay of Chaleurs, 126.
- Mackerel fishery: Change in 1836, 103. Dana at Halifax arbitration, *B. C. C. Ap.*, 188, 129. First attracted Americans to inshore fisheries, 128, 129. Foster at Halifax arbitration, *B. C. C. Ap.*, 182-3, 129. Tuck's speech, 1851-2, *U. S. C. C. Ap.*, 624-5, 127.
- Madison, Monroe and Pinckney to, Jan. 3, 1807, *B. C. Ap.*, 62, maritime jurisdiction, 50-1.
- Madison to Monroe and Pinckney: May 17, 1806, *B. C. Ap.*, 60, maritime jurisdiction, 47. Feb. 3, 1807, *U. S. C. C. Ap.*, 97, 98, impressment, maritime jurisdiction, 48, 49.
- Malmesbury, Crampton to: July 20, 1852, *B. C. Ap.*, 154, Fillmore's opinion, 168. Aug. 2, 1852, *B. C. Ap.*, 156, Webster's opinion on treaty rights, 163-4.
- Malmesbury, Perrier to, July 5, 1852, *U. S. C. C. Ap.*, 225, French exclusive rights, 105.
- Malmesbury to Crampton: Aug. 10, 1852, *B. C. Ap.*, 169, Bay of Fundy, seizure of "Coral," bays, 169. Sept. 16, 1852, *B. C. Ap.*, 196, bays, 3-mile limit, 174-5. Sept. 24, 1852, *B. C. Ap.*, 197, errors in Lawrence's report of British position, 176.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Manan Bank, Bay of Fundy seizures, 115.
- Marcy, Rush to, July 13, 1853, *U. S. C. Ap.*, 549-557: not evidence in this case, 178; rights acknowledged in 1783 not abrogated by war, 177; Webster's notice, 177.
- Marcy to Crampton: Mar. 28, 1856, *B. C. Ap.*, 209, submits modified circular, 187. Apr. 24, 1856, *B. C. Ap.*, 210, incloses copies of second circular, 189.
- Marcy's circulars: General: admission of right to regulate, 255; American argument discussed, not consistent, 191-3; American position to-day inconsistent with, 195-6; Evarts' report, May 17, 1880, *B. C. Ap.*, 280, 273-75; regulations "enjoined" or "enforced," LAMMASCH, 193, also Root, 193. First circular, July 12, 1855, *B. C. Ap.*, 207: 184; Clarendon to Crampton, Oct. 11, 1855, *B. C. Ap.* 208, 187; Crampton to Clarendon, June 1855, *B. C. Ap.* 206, 185, Aug. 7, 1855, *B. C. Ap.* 208, 186; Crampton to Sutton June 27, 1855, *B. C. Ap.*, 205, 184; insufficient, 185; revision of, 189-91. Second circular, Mar. 28, 1856, *B. C. Ap.*, 209: 188-204; applicable to both treaties of 1818 and 1854, 200-3; Evarts' report, 1880, *B. C. Ap.*, 283, 196; limitation of effect of, FITZPATRICK, 198-9, 200; Marcy to Crampton, Mar. 28, 1856, *B. C. Ap.* 209, 187, Apr. 24, 1856, *B. C. Ap.* 210, copy of, 189-90.
- Maritime jurisdiction: Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 64, reporting conversation with Bathurst, 71. Adams to Russell, May 3, 1822, *B. C. C. Ap.*, 156, 161, and 163, 53, 54-6. American argument, 63-9. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 70. Chamberlain-Bayard treaty, *B. C. Ap.*, 42, Feb. 15, 1888, 282. Fish to Thornton, June 30, 1870, *B. C. Ap.*, 239, British instructions of 1870 temporary, 211. Foster, D., Halifax arbitration, 1877, *B. C. C. Ap.*, 183, 57. Jefferson to Secretary of Treasury, Sept. 8, 1804, *B. C. Ap.*, 59, 46. Madison to Monroe and Pinckney, May 17, 1806, *B. C. Ap.*, 60, and Feb. 3, 1807, *U. S. C. C. Ap.*, 97, 98, 48, 49. Monroe and Pinckney to Madison, Jan. 3, 1807, *B. C. Ap.*, 62, 50-1. Senate committee on foreign relations, minority report, Chamberlain-Bayard treaty, *B. C. Ap.*, 464, 287. Thornton to Fish, June 11, 1870, *B. C. Ap.*, 238, instructions to imperial vessels, 210-11. Three league limit, instructions for treaty of commerce with Great Britain, Aug. 14, 1779, *B. C. C. Ap.*, 23, 32. Treaty of Dec. 31, 1806 (unratified), *B. C. Ap.* 26, 48-52.
- Mira bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284.
- Miramichi bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 282.
- Mitchell's map, negotiations of 1782, *B. C. C. Ap.*, 103-104, 35.
- Modus vivendi: Proposed, Fillmore to Webster, July 20, 1852, *B. C. Ap.*, 155, 168. Unsuccessful efforts toward, Granville to West, July 15, 1882, *B. C. Ap.*, 293, 278-9. Of 1885, *B. C. Ap.*, 295, 280. Of 1888, *B. C. Ap.*, 426-7, still operative in Canada, 285.
- Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 64: conversation with Bathurst re bays, maritime jurisdiction, 71; abrogation of 1783 treaty by war, 73.
- Monroe Baker to, Sept. 7, 1815, *B. C. Ap.* 64, denies approval of Jaseur incident, 70.
- Monroe and Pinckney, Madison to: May 17, 1806, *B. C. Ap.*, 60, maritime jurisdiction, 47. Feb. 3, 1807, *U. S. C. C. Ap.*, 97, 98, impressment, maritime jurisdiction, 48, 49.
- Monroe and Pinckney to Madison, Jan. 3, 1807, *B. C. Ap.*, 62, maritime jurisdiction, 50-1.
- Municipal legislation: Evarts to Welch, Aug. 1, 1879, *B. C. Ap.*, 272, 261-3. Exemption from subsequent to 1871 treaty, GRAY, 272.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Historical résumé—Continued.

- Murr bank, Bay of Fundy seizures, 115.
- Nature of right to fisheries: Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, 75. Report, American commissioners, Oct. 20, 1818, *B. C. Ap.*, 94, 91.
- Negotiations prior to treaty of 1783: 33–35. American colonies independent, 29.
- Negotiations prior to treaty of 1814, 58–64.
- Negotiations prior to treaty of 1818, 84–93.
- New Brunswick, 1853, *B. C. Ap.*, 623, regulations against Americans, 133.
- Newfoundland act making 1871 treaty effective; American objections thereto did not deny right to regulate, 228–9.
- Newfoundland ceded to Great Britain, treaty of Utrecht (1713), 24.
- Newfoundland fisheries, British case at Halifax arbitration, *U. S. C. Ap.*, 546–555, 248–255.
- Newfoundland, special provision of 1871 treaty, 223.
- Newfoundland statutes: Bait: 1887, 1888, *B. C. Ap.*, 711, 712, 289; 1889, *B. C. Ap.*, 713, 289; 1893, foreign fishing vessels act, *B. C. Ap.*, 730, 289; 1905, repealing act of 1893, *B. C. Ap.*, 757, 290. Newfoundlanders in American crews: foreign fishing vessels acts, 1905, *B. C. Ap.*, 757, 290; 1906, *B. C. Ap.*, 758, 290–1. Treaty of 1871, act making effective, *B. C. Ap.*, 705–6: 224; Fish to Thornton, June 25, 1873, *B. C. Ap.*, 252, 225; Thornton to Granville: June 23, 1873, *B. C. Ap.*, 251, 224, June 30, 1873, *B. C. Ap.*, 252, 226; Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, 226.
- Noninhabitants of United States, rights, 288, 293.
- Nontreaty and treaty coasts abolished by treaty of 1854, LAMMASCH, 199–200.
- Nova Scotia: Address to King, Americans in bays, Feb. 24, 1836, *U. S. C. Ap.*, 1040–1, 131–2. Ceded to Great Britain, treaty of Utrecht (1713), 24. Enforcement of regulations on coast of, 135. Statute to restrain Americans, Mar. 12, 1836, *B. C. Ap.*, 613, 132–3.
- Orders in council: June 19, 1819, *B. C. Ap.*, 566, treaty of 1818, 94. July 6, 1836, *B. C. Ap.*, 571, regulations, 133. Jan. 8, 1870 (Canada), *B. C. Ap.*, 230, licenses discontinued, 204.
- Origin of Franco-American controversy, *U. S. C. C.*, 89, 103–4.
- Palmerston, Stevenson to, Mar. 27, 1841, *B. C. Ap.*, 125, 3-mile limit, regulations, 139–140.
- Palmerston to Fox, Oct. 6, 1838, *B. C. Ap.*, 117, instructions as to regulations, 137–8.
- Paris negotiations leading to 1783 treaty, 33–35.
- Paris, treaty of 1763, arts. 2, 4, 5, 18, *B. C. Ap.*, 7, 25.
- Partition of empire theory: 27–29, 63. Henderson, 63–5. Pomeroy, "North Eastern Fisheries," *American Law Review*, 5:389, 63. Russell to Secretary of State, Feb. 11, 1815, *B. C. C. Ap.*, 150, 63.
- Perrier to Malmesbury, July 5, 1852, *U. S. C. C. Ap.*, 225, French exclusive right, 105.
- Perry, Commodore: Conversation with, Seymour's memorandum, Aug. 17, 1852, *B. C. Ap.*, 191–2, bays, 164–5. Position on treaty violations, Campbell to Seymour, Aug. 26, 1852, *B. C. Ap.*, 195, 165–6. Sent to Chaleurs Bay, 163. To Seymour, Aug. 20, 1852, *B. C. Ap.*, 193, British leniency in enforcing treaty, 165.
- Perry's admission, 163–7.
- Phelps to Iddesleigh, Dec. 3, 1886, *B. C. Ap.*, 362–3, proposals to settle fisheries difficulty, 281.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- "Pilgrim," Bay of Fundy seizures, deposition of master, *U. S. C. Ap.*, 345, 120; deposition of seaman, *U. S. C. Ap.*, 362, 123.
- Pinckney and Monroe, Madison to: May 17, 1806, *B. C. Ap.*, 60, maritime jurisdiction. Feb. 3, 1807, *U. S. C. C. Ap.*, 97, 98, impressment, maritime jurisdiction, 48, 49.
- Pinckney and Monroe to Madison, Jan. 3, 1807, *B. C. Ap.*, 62, maritime jurisdiction, 50-1.
- Placentia Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284.
- Pomeroy on North Eastern Fisheries, *American Law Rev.*, 1871, 5:389, partition of empire theory, 63.
- Port au Port, Bay of, French interference in, 112.
- President's message, Dec., 1852, *U. S. C. Ap.*, 1265, seven years' peace, 1845-52, 160.
- Prince Edward Island, 1843, *B. C. Ap.*, 617, regulations against Americans, 133.
- Proposals to settle fishery dispute: Phelps to Iddesleigh, Dec. 3, 1886, *B. C. Ap.*, 362-3, 281; Salisbury to White, Mar. 24, 1887, *B. C. Ap.*, 413, 281.
- Provincial governors' opinion on 6-mile bays, 156.
- Putnam's report, Apr. 16, 1888, *B. C. Ap.*, 427-34, history of fishery controversy, 286.
- Queen v. Cunningham, *Bell's Crown Cases Reserved*, p. 72, 98-9.
- "Rebecca," deposition of master, Bay of Fundy seizures, *U. S. C. Ap.*, 358, 372, 122.
- Reciprocity treaty of 1854, *B. C. Ap.*, 36, 181-3.
- Regulations: Against Americans: enforcement of, Messrs. Leavitt, June 13, 1839, *U. S. C. Ap.*, 428, 135; Thayer's report, July 20, 1839, *U. S. C. Ap.*, 426-7, 134-5; statutes: *Canada*: 1868, *B. C. Ap.*, 628, 133; 1870, *B. C. Ap.*, 630, 133; 1886, *B. C. Ap.*, 631-2, 133; 1886, Revised Statutes, *B. C. Ap.*, 632-4, 133-4; *New Brunswick*: 1853, *B. C. Ap.*, 623, 133; *Prince Edward Island*: 1843, *B. C. Ap.*, 617, 133. American argument against right to make, based on Halifax proceedings, wrong, 233-241, 242-255, 264-267. American argument on approval of, by Marcy, 194-5. American objections to Newfoundland act making effective 1871 treaty did not deny right to make, 228-229. Boutwell circulars uphold British position, 215-16, 219. British position in 1838, as to, 138. British position was always same, 293. Canadian, Crampton to Governor-General of Canada, June 28, 1855, *B. C. Ap.*, 206, 185. Cardwell to Lords of Admiralty, Apr. 12, 1866, *B. C. Ap.*, 221, 205-6; lack of American objection to this letter admits British position, 219. Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284. Crampton to Clarendon, June, 1855, *B. C. Ap.*, 206, 185. Crampton to Sutton, June 27, 1855, *B. C. Ap.*, 205, 184. Enforcement of: in Bay of Fundy, 135; on coast of Nova Scotia, 135; Palmerston, Oct. 6, 1838, *B. C. Ap.*, 117, 137; Sabine's report (1852), *U. S. C. Ap.*, 1213, 136; under treaty of 1854, Sutton to Crampton, June 16, 1855, *B. C. Ap.*, 205, 183-4, and Sutton to Russell, May 5, 1855, *B. C. Ap.*, 204, 183; Vail's report, Aug. 14, 1839, *U. S. C. Ap.*, 436, 135. Exemption from municipal, subsequent to 1871 treaty, GRAY, 272. Falkland to Russell, May 8, 1841, *B. C. Ap.*, 127, 140-3. Fortune Bay controversy, 1878-82, 255-279. Halifax commission: Great Britain did not admit inability to make, 229; nor admit "freedom" from, 249-250, 252. "In common," Salisbury to Hoppin, Apr. 3, 1886, *B. C. Ap.*, 278, 268-73. Instructions: Canadian, May 14, 1870, *U. S. C. Ap.*, 532, 207; Palmerston to Fox, Oct. 6, 1838, *B. C. Ap.*, 117, 137-8.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- Joint: difficulties in making, 268; Granville to Lowell, Oct. 27, 1880, *B. C. Ap.*, 289, 275-77. Marcy's first circular, July 12, 1855, *B. C. Ap.*, 207, 184-187. Marcy's second circular, Mar. 28, 1856, *B. C. Ap.*, 209, 188-204. Nova Scotia, statute of Mar. 12, 1836, *B. C. Ap.*, 613, 132-3. Order in Council, July 6, 1836, *B. C. Ap.*, 571, 133. Right to make: 87; Boutwell circular, 255; Evarts to Babson, Aug. 5, 1879, *U. S. C. Ap.*, 673, 267-8; Evarts to Welsh, Aug. 1, 1879, *B. C. Ap.*, 272, 261-3, and Sept. 28, 1878, *B. C. Ap.*, 268, 257-260; Marcy's circular, 255; Salisbury to Welsh, Nov. 7, 1878, *B. C. Ap.*, 271, 260-1. Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 125, 139-140. Thornton to Granville, June 30, 1873, *B. C. Ap.*, 252, 226.
- "Reindeer," deposition of master, Bay of Fundy seizures, *U. S. C. Ap.*, 336, 354, 117.
- Report of American commissioners, Oct. 20, 1818, *B. C. Ap.*, 94: 89; abrogation of treaties by war, 91; nature of right to fisheries, 91.
- Report of committee, Continental Congress, common right of fishery, *B. C. C. Ap.*, 12, 31.
- Report, United States Senate Committee on Foreign Relations: Chamberlain-Bayard treaty, majority report, *B. C. Ap.*, 435, 286; minority report, *B. C. Ap.*, 451, 286; character and value of fisheries, 92-3.
- Resolutions of Continental Congress, common right to fish, *B. C. C. Ap.*, 20, 31.
- "Right" and "concession" in opening Bay of Fundy, Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181, 170-71.
- "Right" and "liberty:" Adams to Castlereagh, Jan. 22, 1816, *B. C. Ap.*, 72-6, 82. J. Adams's diary, *B. C. C. Ap.*, 104, 37. Webster, 1852, unfinished draft, *U. S. C. Ap.*, 531, 65.
- "Right" in Adams's draft of fishery article, Nov. 28, 29, 1782, *B. C. C. Ap.*, 103-4, 34.
- Rights, treaty, Webster's opinion on, Crampton to Malmesbury, Aug. 2, 1852, *B. C. Ap.*, 156, 163-4.
- Robinson and Goulburn, Castlereagh to, Aug. 24, 1818, *B. C. Ap.*, 85, abrogation of 1783 treaty by war, 84.
- Robinson to Castlereagh, *B. C. Ap.*, 92, Oct. 10, 1818, reasons for dropping British proposal for fisheries clause in 1818 treaty, 87.
- Root, Marcy circular, regulations "enjoined" or "enforced," 193.
- Root-Grey correspondence of 1905-7, 291.
- "Ruby" deposition of Small, master, Bay of Fundy seizures, *U. S. C. Ap.*, 337, 366, 118.
- Rush, Adams to, June 27, 1823, *B. C. Ap.*, 107, French exclusive rights, 109-10.
- Rush to Canning, May 3, 1824, *B. C. Ap.*, 111, United States rights on French coast, 111.
- Rush to Gallatin, Oct. 10, 1822, *B. C. Ap.*, 101, French exclusive rights, 106.
- Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549-557: not evidence in this case, 178; rights acknowledged in 1783 not abrogated by war, 177; Webster's notice, 177.
- Rush and Gallatin, Adams to, July 28, 1818, *B. C. Ap.*, 83, instructions, bays, 52; did not touch bays, 84.
- Rush and Gallatin to Adams, Oct. 20, 1818, *B. C. Ap.*, 94, abrogation of 1783 treaty by war, 91.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- Russell, Adams to: May 3, 1822, *B. C. C. Ap.*, 161, effect of war on treaty of 1783, maritime jurisdiction, 53. 1822, *B. C. C. Ap.*, 163, maritime jurisdiction, 54-5.
- Russell, Falkland to: Apr. 28, 1841, *U. S. C. Ap.*, 1043, asking opinion of law officers, 143. May 8, 1841, *B. C. Ap.*, 127, 3-mile limit, regulations, 140-143.
- Russell, Sutton to, May 5, 1855, *B. C. Ap.*, 204, enforcement of regulations under treaty of 1854, 183.
- Russell to Secretary of State, Feb. 11, 1815, *B. C. C. Ap.*, 150, partition of empire theory, 63.
- Sabine's report, 1852, *U. S. C. Ap.*, 1213, 1284-5: enforcement of regulations, 136; seven years' peace 1845-1852, 158-9.
- St. Ann's Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 283.
- St. George, Bay of, French interference in, 112.
- St. Lawrence, Gulf of, enforcement of regulations in, 135.
- St. Mary's Bay: 143. Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284.
- St. Peter's Bay, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 284.
- Salisbury to Hoppin, *B. C. Ap.*, 278, Apr. 3, 1880, "in common" as regards regulation, Fortune Bay, 268-273.
- Salisbury to Welsh: Aug. 23, 1878, *U. S. C. Ap.*, 650, Fortune Bay controversy, 256. Nov. 7, 1878, *B. C. Ap.*, 271, right to regulate, Fortune Bay controversy, 260-1.
- Salisbury to White, Mar. 24, 1887, *B. C. Ap.*, 418-15, criticisms of proposals to settle fisheries difficulty, 281.
- "Sally," deposition of master of, Nov. 5, 1824, *U. S. C. Ap.*, 355, Bay of Fundy seizures, 121.
- "Sea Flower," deposition of master, *U. S. C. Ap.*, 360, Bay of Fundy seizures, 122.
- Secretary of the Admiralty, Seymour to, Aug. 31, 1852, and July 21, 1853, *B. C. Ap.*, 196, 202, Perry's admission, 166-7.
- Secretary of Treasury, Jefferson to, Sept. 8, 1804, *B. C. Ap.*, 59, maritime jurisdiction, 46.
- Seizures: "Argus," 152-153, arbitration regarding, 181. "Coral," 169. "Washington," 145, arbitration regarding, *B. C. Ap.*, 212-217, 178-181.
- Seizures in Bay of Fundy: 1821-24, *U. S. C. Ap.*, 1077, 113-126. Brent to Addington, Sept. 8, 1824, *U. S. C. Ap.*, 334, evidence, 117-120; "Diligent," deposition of Ficket, master of, *U. S. C. Ap.*, 337, 118. Dotterel, seizures by, 116, statement of commander, *U. S. C. Ap.*, 374, 123; affidavits of British sailors, *U. S. C. Ap.*, 380-406, 124. "Escape," statement of master, *U. S. C. Ap.*, 362, 123. Fishing in these cases occurred outside the actual Bay of Fundy, 124. Fishing on banks is not fishing in Bay of Fundy, 116. "Galeon," depositions of master and crew, *U. S. C. Ap.*, 341, 343, 356, 118. "Hero," statement of master, *U. S. C. Ap.*, 370, 123. Manan bank, 115. Murr bank, 115. "Pilgrim," deposition of master, *U. S. C. Ap.*, 345, 120; deposition of seaman on, *U. S. C. Ap.*, 362, 123. "Rebecca," deposition of master, *U. S. C. Ap.*, 353, 372, 122. "Reindeer," deposition of master, *U. S. C. Ap.*, 336, 354, 117. "Ruby," Small, master, his deposition, *U. S. C. Ap.*, 337, 366, 118. "Sally," deposition of master, *U. S. C. Ap.*, 355, 121. "Sea Flower," deposition of master, *U. S. C. Ap.*, 360, 122. Shepley to Adams, Nov. 16, 1824, *U. S. C. Ap.*, 363, evidence, 121-23. United States' position, 114. "William," depositions of master and crew, *U. S. C. Ap.*, 342, 347, 359, 119.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

Senate of United States, debate (1852), 169-174.

Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181; "right" and "concession" in opening Bay of Fundy, 170-171; Webster's notice, bays, 172.

Seymour, Campbell to: Aug. 15, 1852, *B. C. Ap.*, 190, mackerel fishery, 128.

Aug. 26, 1852, *B. C. Ap.*, 195, Perry's position on treaty violations, 165-6.

Seymour, Perry to, Aug. 20, 1852, *B. C. Ap.*, 193, admits British leniency in enforcing treaty, 165.

Seymour's memorandum, Aug. 17, 1852, *B. C. Ap.*, 191-2, conversation with Perry on bays, 164-5.

Seymour to Secretary of Admiralty, Aug. 31, 1852, July 21, 1853, *B. C. Ap.*, 196, 202, Perry's admission, 166-7.

Shelter in Bay of Fundy, Everett to Aberdeen, May 25, 1844, *B. C. Ap.*, 133-4, 150.

Shepley to Adams, Nov. 16, 1824, *U. S. C. Ap.*, 353, Bay of Fundy seizures, 121-3.

Sir Charles Hamilton Sound, Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 283.

Six-mile bays, *see* Bays, *supra*.

Sixty-mile limit, British position, 56-7.

Spain, treaties of, *see* Treaties cited.

Spanish renunciation, 1763, 26.

Stanley, Falkland to: Oct. 17, 1843, *B. C. Ap.*, 131, 146-7. Sept. 17, 1844, *B. C. Ap.*, 136, Bays, 151-2. Sept. 17, 1845, *B. C. Ap.*, 151, decides to uphold British contention as to bays, 157.

Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145, six-mile bays, 156.

Stanley's proposal to relax British position regarding bays, 156.

Statutes cited: *Imperial*: 1819, *B. C. Ap.*, 565, treaty of 1818, 94. *Canada*: 1868, *B. C. Ap.*, 628, regulations against Americans, 133; 1870, *B. C. Ap.*, 630, same, 133; 1886, *B. C. Ap.*, 631-2, same, 133; 1886, Revised Statutes, *B. C. Ap.*, 632-4, same, 133-4. *New Brunswick*: 1853, *B. C. Ap.*, 623, regulations against Americans, 133. *Newfoundland*: 1873, act putting 1871 treaty in force, *B. C. Ap.*, 705-6, 224; 1887, *B. C. Ap.*, 711, bait, 289; 1888, *B. C. Ap.*, 712, bait, 289; 1889, *B. C. Ap.*, 713, bait, 289; 1893, foreign fishing vessels act, *B. C. Ap.*, 730, 289; 1905, foreign fishing vessels act, *B. C. Ap.*, 757, 290; 1906, foreign fishing vessels act, *B. C. Ap.*, 758, 290-1. *Nova Scotia*: Mar. 12, 1836, to restrain Americans, *B. C. Ap.*, 613, 132-3. *Prince Edward Island*: 1843, regulations against Americans, *B. C. Ap.*, 617, 133.

Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 125, 3-mile limit, regulations, 139-40.

Sutton, Crampton to, June 27, 1855, *B. C. Ap.*, 205, Marcy's first circular, 184.

Sutton to Crampton, June 16, 1855, *B. C. Ap.*, 205, enforcement of regulations under treaty of 1854, 183-4.

Sutton to Russell, May 5, 1855, *B. C. Ap.*, 204, enforcement of regulations under 1854 treaty, 183.

Ten-mile rule: 208-9. Chamberlain-Bayard treaty, Feb. 15, 1888, *B. C. Ap.*, 42, 282.

Ternant, Jefferson to, May 15, 1793, *B. C. Ap.*, 54, Attorney General's report on "Grange" incident, bays, 40-41.

Territorial coast belt and bays, distinction, GRAY, 71.

Thayer's report, July 20, 1839, *U. S. C. Ap.*, 426-7, enforcement of regulations against Americans, 134-5.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- Thornton, Blaine to, May 28, 1871, *U. S. C. Ap.*, 787, closing Fortune Bay controversy, 278.
- Thornton, Evarts to, Mar. 2, 1878, *B. C. Ap.*, 268, Fortune Bay controversy, 256.
- Thornton, Fish to: June 8, 1870, *U. S. C. Ap.*, 609, Cardwell's letter, Wellesley's instructions, 221. June 30, 1870, *B. C. Ap.*, 239, British instructions 1870 temporary, 211. June 25, 1873, *B. C. Ap.*, 252, Newfoundland act making effective 1871 treaty, 225.
- Thornton to Blaine, May 28, 1871, *U. S. C. Ap.*, 736, closing Fortune Bay controversy, 278.
- Thornton to Fish: June 3, 1870, *U. S. C. Ap.*, 597, Cardwell's letter, 219-220. June 11, 1870, *B. C. Ap.*, 238, instructions to imperial vessels, 210-211.
- Thornton to Granville: June 23, 1873, *B. C. Ap.*, 251, Newfoundland act making 1871 treaty effective, 224. June 30, 1873, *B. C. Ap.*, 252, regulations, Newfoundland act making treaty of 1871 effective, 226.
- Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, Newfoundland act making 1871 treaty effective, 226.
- Three-league limit, instructions for treaty of commerce with Great Britain, Aug. 14, 1779, *B. C. C. Ap.*, 23, 32.
- Three-mile limit: Aberdeen to Everett, Apr. 15, 1844, *B. C. Ap.*, 132-3, 147-8. American position in 1844, not definite, 149. Canadian instructions, June 27, 1870, *U. S. C. Ap.*, 611, 210. Falkland to Russell, May 8, 1841. *B. C. Ap.*, 127, 140-3. Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, 209. Malmesbury to Crampton, Sept. 16, 1852, *B. C. Ap.*, 196, 174-5. Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 125, 139-40.
- Treaties cited: 1713, France-Great Britain (Utrecht), *B. C. Ap.*, 6-7, Newfoundland and Nova Scotia ceded, 24-5; Hudson Bay ceded, 90. 1763, Great Britain-France-Spain, Paris, *B. C. Ap.*, 7, 25. 1783, Great Britain-United States, *B. C. Ap.*, 12, 27; J. Adams' draft, *B. C. Ap.*, 103, 34; J. Adams' Journal, *B. C. Ap.*, 103-4, 34; negotiations at Paris, 33-35; original draft of fishery article, *B. C. Ap.*, 96, 34. See Abrogation of treaty of 1783. 1783, Great Britain-France, *B. C. Ap.*, 11, 38. 1794, Jay's, *B. C. Ap.*, 16, 45. 1806, Dec. 31 (unratified), Great Britain-United States, *B. C. Ap.*, 24, maritime jurisdiction, did not consider bays, 48-52. 1814, Great Britain-United States (Ghent), *B. C. Ap.*, 25, 58; negotiations leading to, 58-64; "fishing" therein, British position, *B. C. C. Ap.*, 137, 148, 58-9; Adams' memoirs, Nov. 7, 1814, *B. C. C. Ap.*, 137, 138, 140, 60-1. 1818, Great Britain-United States, *B. C. Ap.*, 31, 92: British proposition for fishery article, *B. C. Ap.*, 89, 85-6; correspondence preliminary to, 68-83; enforcement of, Webster's notice, July 6, 1852, *B. C. Ap.*, 152-3, 161-3; imperial statute, 1819, *B. C. Ap.*, 565, 94; Marcy's second circular applicable to, 200-3; negotiations preceding, 84-93; order in council, June 19, 1819, *B. C. Ap.*, 566, 94; renunciatory clause, 92; report of American commissioners on, Oct. 20, 1818, *B. C. Ap.*, 94, 89; Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, reasons for dropping British proposal for fishery clause, 87; United States proposition for fishery article, *B. C. Ap.*, 88, 85. 1854, United States-Great Britain (reciprocity), *B. C. Ap.*, 36, 181-3: abolished treaty and nontreaty coasts, LAMMASCH, 199-200; coasts opened up by, FITZPATRICK, 203; Delaware Bay under, 182; partly replaced by license system 1866-1870, *U. S. C.*, 135-8, 204. 1871, United States-Great Britain (Washington), *B. C. Ap.*, 31, 222-3, 230; determined by United States, *B. C. Ap.*, 294, 280; Newfoundland act making effective: *B. C. Ap.*, 705-6, 224; Fish to Thornton, June 25, 1873,

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

- B. C. Ap.*, 252, 225; Thornton to Granville, June 23, 1873, *B. C. Ap.*, 251, 224, and June 30, 1873, *B. C. Ap.*, 252, 226; Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, 226. 1888, Feb. 15, Chamberlain-Bayard (unratified), *B. C. Ap.*, 42, 281-8; 1891, Bond-Blaine convention (unratified), *B. C. Ap.*, 45, 289; 1902, Nov. 8, Hay-Bond convention (unratified), *B. C. Ap.*, 46, 290.
- Treaty and nontreaty coasts abolished by treaty of 1854, LAMMASCH, 199-200.
- Treaty coast, Boutwell circular applies to, 219.
- Treaty rights, Webster's opinion on, Crampton to Malmesbury, Aug. 2, 1852, *B. C. Ap.*, 156, 163-4.
- Tuck's speech, mackerel fishery, 1851-2, *U. S. C. C. Ap.*, 624-5, 127.
- United States' objections to British fishery article, 1818, *B. C. Ap.*, 91, 86.
- United States' proposition for fishery article, 1818, *B. C. Ap.*, 88, 85.
- United States rights on French coast: S. Canning to G. Canning, May 6, 1824, *B. C. Ap.*, 112-3, 111; Rush to Canning, May 3, 1824, *B. C. Ap.*, 111, 111.
- United States Senate, debate in, 1852, 169-174.
- United States, treaties of, *see* Treaties cited.
- Utrecht, treaty of, *see* Treaties cited.
- Vail's report, Aug. 14, 1839, *U. S. C. Ap.*, 436, enforcement of regulations, 135.
- War, *see* Abrogation of treaty of 1783 by.
- War of 1812 did not abrogate treaty of 1783, U. S. contention, 59.
- "Washington:" Aberdeen to Everett, Apr. 15, 1844, *B. C. Ap.*, 152-3, 147-8, and Mar. 10, 1845, *B. C. Ap.*, 141, 153. Arbitration of, *B. C. Ap.*, 212-217: 178-181; award by Bates, Aug. 8, 1856, *B. C. Ap.*, 216, 179. Everett to Aberdeen, Aug. 10, 1843, *B. C. Ap.*, 130, 146. Everett to Buchanan, Apr. 23, 1845, *B. C. Ap.*, 145, 155. Falkland to Stanley, Oct. 17, 843, *B. C. Ap.*, 131, 146-7. Seizure of, 145.
- Washington, Treaty of, *see* Treaties cited.
- Water and wood, law officers' opinion, 145.
- Webster, Fillmore to, July 20, 1852, *B. C. Ap.*, 155, proposed *modus vivendi*, 168.
- Webster to Crampton, July 17, 1852, *B. C. Ap.*, 154, Webster's notice, 168.
- Webster's notice, July 6, 1852, *B. C. Ap.*, 152-3: Bays, 161-3. Does not uphold claim of agreement between negotiators in 1818 as to British claim, 163. Enforcement of regulations under treaty of 1818, 161-3. Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549-557, 177. Seward's speech, Aug. 14, 1852, *B. C. Ap.*, 181, 172. Webster to Crampton, July 17, 1852, *B. C. Ap.*, 154, 168.
- Webster's opinion on treaty rights, Crampton to Malmesbury, Aug. 2, 1852, *B. C. Ap.*, 156, 163-4.
- Webster's unfinished draft, 1852, *U. S. C. Ap.*, 531, "rights" and "liberties," abrogation of 1783 treaty by war, 65.
- Wellesley's instructions, *U. S. C. Ap.*, 598: 208. Fish to Thornton, June 8, 1870, *U. S. C. Ap.*, 609, 221.
- Welsh, Evarts to: Sept. 28, 1878, *B. C. Ap.*, 263, Fortune Bay, right to regulate, 257-260. Aug. 1, 1879, *B. C. Ap.*, 272, municipal legislation, right to regulate, Fortune Bay controversy, 261-3.
- Welsh, Salisbury to: Aug. 23, 1878, *U. S. C. Ap.*, 650, Fortune Bay controversy, 256. Nov. 7, 1878, *B. C. Ap.*, 271, right to regulate, Fortune Bay controversy, 260-1.
- West, Granville to, July 15, 1882, *B. C. Ap.*, 293, unsuccessful efforts to establish *modus vivendi*, 278-9.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Historical résumé—Continued.*

White, Salisbury to, Mar. 24, 1887, *B. C. Ap.*, 413-15, criticisms of proposal to settle fisheries difficulties, 281.

"William," depositions of master and crew, Bay of Fundy seizures, *U. S. C. Ap.*, 342, 347, 359, 119.

Wood and water, law officers' opinion, 145.

Young, Granville to, June 6, 1870, *U. S. C. Ap.*, 609, 3-mile limit, 6-mile bays, 209.

Young, Kimberley to, Oct. 10, 1870, *U. S. C. Ap.*, 628-9, bay "of her Majesty's dominions," 212.

Question 1, pp. 8, 11-14, 294-363. (June 6, 14, 16, 1910.)

Abrogation of 1783 treaty by 1812 war, 304.

Adams advanced partition theory, 304.

Aliens, regulations: *Imperial*: 1786, *B. C. Ap.*, 555, 330; 1824, *B. C. Ap.*, 567, 333-334.

American argument, kinds of regulations, *U. S. A.*, 66-7, 320-325.

Anchorage, regulations: *Lower Canada*, 1836, *B. C. Ap.*, 615, 333. *Newfoundland*, 1653, *B. C. Ap.*, 511, 325, 326; 1699, *B. C. Ap.*, 525-6, 326-7; 1660, Star Chamber rules, *B. C. Ap.*, 513, 326.

Arbitral tribunal, recourse to in case of prejudicial regulations, GRAY, 337, 338; provisions of Special Agreement of 1909 discussed, 338-9.

Babson, Evarts to, Aug. 5, 1879, *U. S. C. Ap.*, 673, "right" or "license," 315.

Bait regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-2; 1807, *B. C. Ap.*, 600, 332. *Newfoundland*, 1663, *B. C. Ap.*, 517, 326; 1699, *B. C. Ap.*, 525-6, 326-7.

Ballast, regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-2; 1807, *B. C. Ap.*, 600, 332; 1836, *B. C. Ap.*, 615, 333. *Newfoundland*, 1611, *B. C. Ap.*, 689, 325; 1653, *B. C. Ap.*, 511, 325, 326; 1660, Star Chamber rules, *B. C. Ap.*, 513, 326; 1699, *B. C. Ap.*, 525-6, 326-7. *Imperial statutes*, 1824, *B. C. Ap.*, 567, 333-4; 1838, *B. C. Ap.*, 697, 334. *New Plymouth*, 1670, *B. C. Ap.*, 770, 329.

Bays, Chaleurs, 331-2; Gaspé, 331-2; Miramichi, 330-1, 332.

Bello, 112-13, servitudes; presumption in favor of servient state, 310.

Bluntschli, 214, servitudes, presumption in favor of servient state, 307.

Boutwell circulars, 1870-2, *B. C. Ap.*, 237, recognition of right of British claim as to regulations, 317.

British position as to regulations recognized five times, 316.

Canal and river navigation, liberty of, 346.

Cardwell letter, 1866, *B. C. Ap.*, 221, recognition of right of British claim as to regulations, 317.

Case cited: The "Exchange," 7 *Cranch (U. S.)*, 116, servitudes, 313.

Chaleurs Bay, regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-332.

Clauss, 206, servitudes, presumption in favor of servient state, 307.

Close season, regulations: *Newfoundland*, 1879, *B. C. Ap.*, 708, 335.

Colonial governments, rights of, Root to Reid, June 30, 1906, *B. C. Ap.*, 499, 298.

Colonial Laws Validity Act of 1865, 348.

Concurrence of United States and reasonableness of regulations, GRAY, 295; LAMMASCH, 294.

Davis, Bahcroft, reported in Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, recognition of right of British claim as to regulations, 318, Gray, 319.

Delaware, regulations, Mar. 28, 1871, *B. C. Ap.*, 788-9, Sunday fishing, 335.

Despagnet, p. 188, servitudes, presumption in favor of servient state, 308.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Question 1—Continued.*

Des Voeux to Stanhope, Nov. 24, 1886, *B. C. Ap.*, 319, French shore regulations, 356.

Discrimination in shore regulations not permissible, 297.

DRAGO: meaning of articles 2 and 4 of Special Agreement, 1909, 340-41.

Drying, regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-332; 1807, imperial statute, *B. C. Ap.*, 600, 332.

Evarts to Babson, Aug. 5, 1879, *U. S. C. Ap.*, 673, "right" or "license," 315.

"Exchange," the, 7 *Cranch (U. S.)*, 116, servitudes, 313.

"Exclusive" or "in common," French rights, LAMMASCH, opinion English law officers, 362.

Fabre, 114, servitudes, 362.

Fish, reported in Thornton to Granville, 1873, *B. C. Ap.*, 252, recognition of right of British claims as to regulations, 318.

FITZPATRICK: "Any sort of fishing," Imperial statute of 1824 regarding Newfoundland, 333-334. Municipal legislation, 344. "Partition" theory, 349. Treaty of 1763, Great Britain-France-Spain, *B. C. Ap.*, 8, 5th sec., French shore, 352.

Fortune Bay case, LAMMASCH, 335.

France, treaties of, *See* Treaties cited.

French shore question: 349-360, 361-3. American argument, 349-350. Des Voeux to Stanhope, Nov. 24, 1886, *B. C. Ap.*, 319, regulation French shore, 356. Exclusive rights of France, 350. Fabre, *p.* 114, 362. France-United States treaty of Feb. 6, 1778, *B. C. C. Ap.*, 3, French exclusive right, 350. LAMMASCH, French rights "in common" or "exclusive," opinion English law officers, 362. Regulation of French shore, 1886, order in council, Aug. 9, 1886, *U. S. C. C. Ap.*, 319, lobsters, 356. Statutes carrying out 1818 United States treaty and 1783 French treaty dissimilar, 355. Statutes: 1788, *B. C. Ap.*, 561-3, giving effect to French coast treaty, 354-5; 1819, *B. C. Ap.*, 565, 354; 1824, *B. C. Ap.*, 567, LAMMASCH, 357. Treaties with France and United States unlike, 350, 354. Treaty of Utrecht, 1713, *B. C. Ap.*, 7, art. 13, 351. Treaty of 1763, *B. C. C. Ap.*, 8, 5th section, FITZPATRICK, 351. Treaty of 1783, *B. C. Ap.*, 11, arts. 4, 5, 352. Treaty of 1904, *B. C. Ap.*, 48, local regulations, 359.

Gaspé Bay, regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-332.

Gaspé fisheries, regulations: *Lower Canada*, 1829, *B. C. Ap.*, 610, 333.

General remarks, 11-14.

Grant, treaty of 1783 is, not partition, 303.

Granville, Thornton to, June 30, 1873, *B. C. Ap.*, 252, Fish's views on right of British claim to regulations, 318.

GRAY: Divisibility of subdivision (c) of question 1, 295. Municipal legislation, 343. Recourse to arbitral tribunal against prejudicial regulations, 337, 338. Remedy for regulations prejudicial to Americans, 342. Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, Bancroft Davis on right of British claim to regulations, 319.

Great Britain, statutes of, *See* Statutes cited, *Imperial*.

Great Britain, treaties of, *See* Treaties cited.

Gurry grounds, regulations: *New Brunswick*, 1853, *B. C. Ap.*, 623, 332; 1854, Revised Statutes, *B. C. Ap.*, 626, 332-333.

Halifax arbitration, 1877, American recognition of right of British claim as to regulations, 319-20.

Hall, 159-160, servitudes, presumption in favor of servient state, 310-311.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Question 1—Continued.*

- Harbor admiral, regulations: *Newfoundland*, 1699, *B. C. Ap.*, 525-6, 326-7. Heffter, p. 93, servitudes, presumption in favor of servient state, 308. Herring, regulations: *Newfoundland*, 1862, *B. C. Ap.*, 702, 334-335. Hill, Thornton to, July 10, 1873, *B. C. Ap.*, 253, Bancroft Davis on right of British claim to regulations, 318; GRAY, 319. Holtzendorff, 2:247, servitudes, presumption in favor of servient state, 306. In-barring, regulations: *Newfoundland*, 1862, *B. C. Ap.*, 702, 334-335. "In common," 315. "In common" or "exclusive," French rights, LAMMASCH, opinion English law officers, 362. International law writers cited: Bello, 112-113, servitudes, 310. Bluntschli, 214, servitudes, 307. Clauss, 206, servitudes, 307. Despagne, 188, servitudes, 308. Hall, 159-160, servitudes, 310-311. Heffter, 93, servitudes, 308. Holtzendorff, 2:247, servitudes, 306. Klüber, 238, servitudes, 309. F. de Martens, I:483, servitudes, 310. Phillimore, I:391, servitudes, 308. Pitt Cobbett, I:159, servitudes, 312. Pradier-Fodéré, 2:405, servitudes, 309. Rivier, 1:296, servitudes, 307. Jigging squids, regulations: *Newfoundland*, 1877, *B. C. Ap.*, 707, 335. Jurisdiction of Great Britain: Asserted by United States in 1822, 297; unquestioned, 296. Jurisdictional powers of Great Britain not test of limits of American rights, Root to Reid, June 30, 1906, *B. C. Ap.*, 500, 299. Klüber, 238, servitudes; presumption in favor of servient state, 309. Labrador, regulations, 1765, *B. C. Ap.*, 690, 691, 327. LAMMASCH: Fortune Bay case, 335. French rights "in common" or "exclusive," opinion English law officers, 362. Meaning of articles 2 and 4, Special Agreement, 1909, 339-40. Municipal legislation, 344. Statute of 1824, *B. C. Ap.*, 567, French shore, statute of 1788, 357. Subdivision (c) of question 1 divisible, 294. Legislation, municipal. *See* Municipal legislation. Liberties, analogous: Property rights, 347; residence privileges, 346; river and canal navigation, 346; trade privileges, 346. "Liberty" and "right," 304, 315. "Licence" or "right," Evarts to Babson, Aug. 5, 1879, *U. S. C. Ap.*, 673, 315. License, regulations: *New Plymouth*, 1672, *B. C. Ap.*, 771, 329-330; *Nova Scotia*, 1665, *B. C. Ap.*, 586, 327-328. Lobsters, regulation French shore, order in council, Aug. 9, 1886, *U. S. G. C. Ap.*, 319, 356. Lower Canada, regulations: 1788, *B. C. Ap.*, 592, Chaleurs and Gaspé Bays, bait, drying, seining, ballast, offal, 331-332. 1807, *B. C. Ap.*, 600, bait, drying, seining, ballast, offal, 332. 1824, *B. C. Ap.*, 607, 333; 1829, *B. C. Ap.*, 610, Gaspé fisheries, 333. 1836, *B. C. Ap.*, 615, ballast, anchorage, 333. Mackerel fishing, regulations: *Massachusetts*, 1702, *B. C. Ap.*, 773, 329. *New Hampshire*, 1687, *B. C. Ap.*, 772, 329. Marcy circulars, 1855-56, *B. C. Ap.*, 209, recognition of right of British claim as to regulations, 316. F. de Martens, I:483, servitudes; presumption in favor of servient state, 310. Maryland, regulations, 1896, *B. C. Ap.*, 793, nets, 335. Massachusetts, regulations: 1668, *B. C. Ap.*, 770, spawning, offal, 328; 1692, *B. C. Ap.*, 772, seining, 329; 1702, *B. C. Ap.*, 773, mackerel fishing, 329. Meaning of this question, 294.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Question 1—Continued.*

- Miramichi Bay, regulations: *New Brunswick*, 1799, *B. C. Ap.*, 597, 330–331; 1823, *B. C. Ap.*, 607, 332; 1829, *B. C. Ap.*, 609, 332; 1834, *B. C. Ap.*, 612, 332.
- Municipal legislation: Effect of, when violative of treaty: 343–344; GRAY, 343; FITZPATRICK, 344; LAMMASCH, 344. Right of U. S. to concur in, 345.
- Nets, regulations as to setting: *New Brunswick*, 1799, *B. C. Ap.*, 597, 330–331. *Maryland*, 1896, *B. C. Ap.*, 793, 335. *New Brunswick*, 1810, *B. C. Ap.*, 604, 331; 1853, *B. C. Ap.*, 623, 332. *Newfoundland*, 1824, imperial statute, *B. C. Ap.*, 567, 333–334. *New York*, 1775, *B. C. Ap.*, 776, 330.
- New Brunswick, regulations: 1793, *B. C. Ap.*, 595, seining, Sunday fishing, 330. 1799, *B. C. Ap.*, 597, Miramichi Bay, setting nets, seining, 330–331. 1810, *B. C. Ap.*, 604, nets, 331. 1818, *B. C. Ap.*, 605, offal, 332. 1823, *B. C. Ap.*, 607, seining, Miramichi Bay, 332. 1829, *B. C. Ap.*, 609, seining, Miramichi Bay, 332. 1834, *B. C. Ap.*, 612, seining, Miramichi Bay, 332. 1853, *B. C. Ap.*, 623, nets, gurry grounds, 332. 1854, Revised Statutes, *B. C. Ap.*, 626, gurry grounds, seining, spawning, 332–333.
- Newfoundland: Imperial statute regarding, 1824, FITZPATRICK, “any sort of fishing,” 333–334. Regulations: 1611, *B. C. Ap.*, 689, ballast, 325; 1653, *B. C. Ap.*, 511, ballast, anchorage, 325, 326; 1660, *B. C. Ap.*, 513, Star Chamber Rules, anchorage, ballast, 326; 1663, *B. C. Ap.*, 517, bait, 326; 1699, *B. C. Ap.*, 525–526, bait, ballast, harbor admiral, anchorage, Sunday fishing, 326–327; 1765, *B. C. Ap.*, 690, Labrador coast, 327; 1786, imperial statute, *B. C. Ap.*, 555, seine meshes, aliens, 330; 1824, imperial statute, *B. C. Ap.*, 567, ballast, nets, aliens, 333–334; 1838, imperial statute, *B. C. Ap.*, 697, ballast, 334; 1862, *B. C. Ap.*, 702, herring, salmon, seining, in-barring, seine meshes, treaty rights, 334–335; 1876, *B. C. Ap.*, 707, seining, Sunday fishing, treaty rights, 335; 1877, *B. C. Ap.*, 707, jigging squids, 335; 1879, *B. C. Ap.*, 708, close season, 335.
- New Hampshire, regulations, 1687, *B. C. Ap.*, 772, mackerel fishing, seining, 329.
- New Jersey, regulations, 1826, *B. C. Ap.*, 785, seining, 335.
- New Plymouth, regulations: 1668, *B. C. Ap.*, 770, offal, 329; 1670, *B. C. Ap.*, 770, ballast, 329; 1672, *B. C. Ap.*, 771, license, 329–330; 1684, *B. C. Ap.*, 771, seining, 330.
- New York, regulations: 1772, *B. C. Ap.*, 775, seine meshes, 330; 1775, *B. C. Ap.*, 776, setting nets, 330.
- Nova Scotia, regulations: 1665, *B. C. Ap.*, 586, Sunday fishing, license, offal, 327–328; 1770, *B. C. Ap.*, 587, offal, 328; 1786, *B. C. Ap.*, 591, seining, Sunday fishing, 330.
- Offal regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331–332; 1807, *B. C. Ap.*, 600, 332. *Massachusetts*, 1668, *B. C. Ap.*, 770, 328. *New Brunswick*, 1818, *B. C. Ap.*, 605, 332. *New Plymouth*, 1668, *B. C. Ap.*, 770, 329. *Nova Scotia*, 1665, *B. C. Ap.*, 586, 327–328; 1770, *B. C. Ap.*, 587, 328.
- Order in council, regulation French shore, Aug. 9, 1886, *U. S. G. C. Ap.*, 319, lobsters, 356.
- Partition of empire theory, 302; FITZPATRICK, 349.
- Partition theory advanced by Adams, 304; dropped by United States in argument, 305.
- Partition, treaty of 1783 is not, but grant, 303.
- Phillimore, *I: 391*, servitudes, presumption in favor of servient state, 308.
- Pitt-Cobbett, *I: 159*, servitudes, presumption in favor of servient state, 312.
- Police power remains with Great Britain, 297.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 1—Continued.

Pradier-Fodéré, 2: 405, servitudes, presumption in favor of servient state, 309. Property rights in foreign countries, 346.

Reasonableness of regulations and concurrence of United States separable, GRAY., 295; LAMMASCH, 294.

Reasonableness of regulations to be decided by this tribunal, 298.

Regulations: Abuse of, American argument, 336-7, 341. Aliens, imperial statutes, 1786, *B. C. Ap.*, 555, 330; 1824, *B. C. Ap.*, 567, 333-4. British position recognized five times (1) Marcy circulars, 1855-6, *B. C. Ap.*, 209, 316; (2) Boutwell circulars, 1870-2, *B. C. Ap.*, 237, 317; (3) Cardwell letter, 1866, *B. C. Ap.*, 221, 317; (4) Davis, Bancroft, reported in Thornton to Hill (July 10), 1873, *B. C. Ap.*, 253, 318; GRAY, 319; (5) Halifax Commission, 1877, 319. Can not be passed without concurrence of United States, GRAY, 295; LAMMASCH, 294. Consent of United States thereto can not be compelled, 315-16. *Delaware*: Mar. 28, 1871, *B. C. Ap.*, 788, 9, Sunday fishing, 335; destructive, power to make not claimed by Great Britain, 301; different kinds of, *U. S. A.*, pp. 66, 67, discussed, 320-325; existed at time of 1818 treaty, 336. French shore: Des Voeux to Stanhope, Nov. 24, 1886, *B. C. Ap.*, 319, 356; lobsters, order in council, 1886, *U. S. C. C. Ap.*, 319, 356; *Labrador*: 1765, *B. C. Ap.*, 690, 691, 327. *Lower Canada*: 1788, *B. C. Ap.*, 592, Chaleurs and Gaspé Bays, bait, drying, seining, ballast, offal, 331-332; 1807, *B. C. Ap.*, 600, bait, drying, seining, ballast, offal, 332; 1824, *B. C. Ap.*, 607, 333; 1829, *B. C. Ap.*, 610, Gaspé fisheries, 333; 1836, *B. C. Ap.*, 615, ballast, anchorage, 333. *Maryland*: 1896, *B. C. Ap.*, 793, nets, 335. *Massachusetts*: 1668, *B. C. Ap.*, 770, spawning, offal, 328; 1692, *B. C. Ap.*, 772, seining, 329; 1702, *B. C. Ap.*, 773, mackerel fishing, 329. Municipal, 343-344. Must be reasonable, 301. *New Brunswick*: 1793, *B. C. Ap.*, 595, seining, Sunday fishing, 330; 1799, *B. C. Ap.*, 597, Miramichi Bay, setting nets, seining, 330-331; 1810, *B. C. Ap.*, 604, nets, 331; 1818, *B. C. Ap.*, 605, offal, 332; 1823, *B. C. Ap.*, 607, seining, Miramichi Bay, 332; 1829, *B. C. Ap.*, 609, seining, Miramichi Bay, 332; 1834, *B. C. Ap.*, 612, seining, Miramichi Bay, 332; 1853, *B. C. Ap.*, 623, nets, gurry grounds, 332; 1854, Revised Statutes, *B. C. Ap.*, 626, gurry grounds, seining, spawning, 332-333. *Newfoundland*: 1611, ballast, *B. C. Ap.*, 689, 325; 1653, ballast, anchorage, *B. C. Ap.*, 511, 325, 326; 1660, Star Chamber Rules, *B. C. Ap.*, 513, ballot, anchorage, 326; 1663, *B. C. Ap.*, 517, bait, 326; 1699, *B. C. Ap.*, 525-6, bait, ballast, harbor admiral, anchorage, Sunday fishing, 326-7; 1765, *B. C. Ap.*, 690, Labrador coast, 327; 1786, imperial statute, *B. C. Ap.*, 555, seine meshes, aliens, 330; 1824, imperial statute, *B. C. Ap.*, 567, ballast, nets, aliens, 333-334; 1838, imperial statute, *B. C. Ap.*, 697, ballast, 334; 1862, *B. C. Ap.*, 702, herring, salmon, seining, in-barring, seine meshes, treaty rights, 334-335; 1876, *B. C. Ap.*, 707, seining, Sunday fishing, treaty rights, 335; 1877, *B. C. Ap.*, 707, jigging squids, 335; 1879, *B. C. Ap.*, 708, close season, 335. *New Hampshire*: 1687, *B. C. Ap.*, 772, mackerel fishing, seining, 329. *New Jersey*: 1826, *B. C. Ap.*, 785, seining, 335. *New Plymouth*: 1668, *B. C. Ap.*, 770, offal, 329; 1670, *B. C. Ap.*, 770, ballast, 329; 1672, *B. C. Ap.*, 771, license, 329-330; 1684, *B. C. Ap.*, 771, seining, 330. *New York*: 1772, *B. C. Ap.*, 775, seine meshes, 330; 1775, *B. C. Ap.*, 776, setting nets, 330. Not excluded from 1818 treaty, 336. *Nova Scotia*: 1665, *B. C. Ap.*, 586, Sunday fishing, license, offal, 327-328; 1770, *B. C. Ap.*, 587, offal, 328; 1786, *B. C. Ap.*, 591, seining, Sunday fishing, 330. Prejudicial, recourse to arbitral tribunal against, GRAY, 337, 338. Prejudicial to American fishermen a breach of

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 1—Continued.

- the treaty, 337. Prejudicial to American, remedy for, *GRAY*, 342. Reasonableness of, to be decided by this tribunal, 298. Right of Great Britain and colonies to make, controlled by treaty, 301. Right of United States to concur in, 345. Shore regulations, discrimination not allowed in, 297. Sunday fishing, 323-25. Three periods: First period, up to 1783, 325-330; second period, 1783-1818, 330-332; third period, since 1818, 332-336. Treaty provisions of Special Agreement, 1909, discussed, 338-9. United States concurrence in, not necessary, 301.
- Reid, Root to, June 30, 1906, *B. C. Ap.*, 499, 500: jurisdictional powers of Great Britain not test of limits of United States rights, 299; rights of colonial governments, 298.
- Residence privileges in foreign countries, 346.
- "Right" and "liberty," 304, 315.
- "Right" or "license," *Evarts* to *Babson*, Aug. 5, 1879, *U. S. C. Ap.*, 673, 315.
- River and canal navigation, liberty of, 346.
- Rivier, *I:296*, presumption in favor of servient state; servitudes, 307.
- Root to Reid, June 30, 1906, *B. C. Ap.*, 499, 500: jurisdictional powers of Great Britain not test of limits of United States rights, 299; rights of colonial governments, 298.
- Salmon regulations: *Newfoundland*, 1862, *B. C. Ap.*, 702, 334-335.
- Seine meshes, regulations: *Imperial*, 1786, *B. C. Ap.*, 555, 330. *Newfoundland*, 1862, *B. C. Ap.*, 702, 334-335. *New York*, 1772, *B. C. Ap.*, 775, 330.
- Seining regulations: *Lower Canada*, 1788, *B. C. Ap.*, 592, 331-332; 1807, *B. C. Ap.*, 600, 332. *Massachusetts*, 1692, *B. C. Ap.*, 772, 329. *New Brunswick*, 1793, *B. C. Ap.*, 595, 330; 1799, *B. C. Ap.*, 597, 330-331; 1799, *B. C. Ap.*, 597, 330-331; 1823, *B. C. Ap.*, 607, 332; 1829, *B. C. Ap.*, 609, 332; 1834, *B. C. Ap.*, 612, 332; 1854, Revised Statutes, *B. C. Ap.*, 626, 332-333. *Newfoundland*, 1862, *B. C. Ap.*, 702, 334-335; 1876, *B. C. Ap.*, 707, 335. *New Hampshire*, 1687, *B. C. Ap.*, 772, 329. *New Jersey*, 1826, *B. C. Ap.*, 785, 335. *New Plymouth*, 1684, *B. C. Ap.*, 771, 330. *Nova Scotia*, 1786, *B. C. Ap.*, 591, 330.
- Servitudes: 8, 306-315. "Exchange," case of 7, *Cranch (U. S.)* 116, 313. *Fabre*, 114, 362. Presumption in favor of servient state: *Bello*, 112-113, 310; *Bluntschli*, 214, 307; *Clauss*, 206, 307; *Despagnet*, 188, 308; *Hall*, 159-160, 310-311; *Heffter*, 93, 308; *Holtzendorff*, 2247, 306; *Klüber*, 238, 309; *F. de Martens*, *I:483*, 310; *Phillimore*, *I:391*, 308; *Pitt-Cobbett*, *I:159*, 312; *Pradier-Fodéré*, 2:405, 309; *Rivier*, *I:296*, 307.
- Shore regulations must not discriminate, 297.
- Sovereignty, reserved, argument of United States, 344-5.
- Spawning, regulations: *Massachusetts*, 1668, *B. C. Ap.*, 770, 328. *New Brunswick*, 1854, Revised Statutes, *B. C. Ap.*, 626, 332-333.
- Special Agreement of 1909, meaning of articles 2 and 4: *DRAGO*, 340-341; *LAMMASCH*, 339-340.
- Stanhope, Des Voeux to, Nov. 24, 1886, *B. C. Ap.*, 319, French shore regulations, 356.
- Star Chamber Rules: *Newfoundland*, 1660, *B. C. Ap.*, 513, Ballast, anchorage, 326.
- Statutes cited: *Imperial*, 1788, *B. C. Ap.*, 561-563, French coast treaty of 1783, 354-355; 1807, *B. C. Ap.*, 600, bait, drying, seining, ballast, offal, 332; 1819, *B. C. Ap.*, 565, treaty of 1818, 344, 354; 1824, *B. C. Ap.*, 567, act of 1788, French treaty, 356; 1824 (*Newfoundland*), *B. C. Ap.*, 567, ballast, nets, aliens, *FITZPATRICK*, 333-5; 1838 (*Newfoundland*), *B. C. Ap.*, 697,

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 1—Continued.

ballast, 334; 1865, Colonial Laws Validity Act, 348. *Lower Canada*: 1788, *B. C. Ap.*, 592, Chaleurs and Gaspé Bays, bait, drying, seining, ballast, offal, 331–332; 1807, *B. C. Ap.*, 600, bait, drying, seining, ballast, offal, 332; 1824, *B. C. Ap.*, 607, regulations, 333; 1829, *B. C. Ap.*, 610, Gaspé fisheries, 333; 1836, *B. C. Ap.*, 615, ballast, anchorage, 333. *Massachusetts*: 1668, *B. C. Ap.*, 770, spawning, offal, 328; 1692, *B. C. Ap.*, 772, seining, 329; 1702, *B. C. Ap.*, 773, mackerel fishing, 329. *New Brunswick*: 1793, *B. C. Ap.*, 595, seining, Sunday fishing, 330; 1799, *B. C. Ap.*, 597, Miramichi Bay, setting nets, seining, 330–331; 1810, *B. C. Ap.*, 604, nets, 331; 1818, *B. C. Ap.*, 605, offal, 332; 1823, *B. C. Ap.*, 607, seining, Miramichi Bay, 332; 1829, *B. C. Ap.*, 609, seining, Miramichi Bay, 332; 1834, *B. C. Ap.*, 612, seining, Miramichi Bay, 332; 1853, *B. C. Ap.*, 623, nets, gurry grounds, 332; 1854, Revised Statutes, *B. C. Ap.*, 626, gurry grounds, seining, spawning, 332–333. *Newfoundland*: 1663, bait, *B. C. Ap.*, 517, 326; 1699, *B. C. Ap.*, 525–526, bait, ballast, harbor admiral, anchorage, Sunday fishing, 326–327; 1786, *B. C. Ap.*, 555, seine meshes, aliens, 330; 1862, *B. C. Ap.*, 702, herring, salmon, seining, in-barring, seine meshes, treaty rights, 334–335; 1876, *B. C. Ap.*, 707, seining, Sunday fishing, treaty rights, 335; 1877, *B. C. Ap.*, 707, jigging squids, 335; 1879, *B. C. Ap.*, 708, close season, 335. *New Hampshire*: 1687, *B. C. Ap.*, 772, mackerel fishing, seining, 329. *New Plymouth*: 1668, *B. C. Ap.*, 770, offal, 329; 1670, *B. C. Ap.*, 770, ballast, 329; 1672, *B. C. Ap.*, 771, license, 329–330; 1684, *B. C. Ap.*, 771, seining, 330. *New York*: 1772, *B. C. Ap.*, 775, seine meshes, 330; 1775, *B. C. Ap.*, 776, net setting, 330. *Nova Scotia*: 1770, *B. C. Ap.*, 587, offal, 328; 1786, *B. C. Ap.*, 591, seining, Sunday fishing, 330. Statutes, regulations, three periods, (1) up to 1783, 325–330; (2) 1783–1818, 330–332; (3) since 1818, 332–336.

Summary of first question, 360–361.

Sunday fishing, 323–325. Regulations: *Delaware*, Mar. 28, 1871, *B. C. Ap.*, 788–789, 335; *New Brunswick*, 1793, *B. C. Ap.*, 595, 330; *Newfoundland*, 1699, *B. C. Ap.*, 525–526, 326–327; 1876, *B. C. Ap.*, 707, 335; *Nova Scotia*, 1665, *B. C. Ap.*, 586, 327–328; 1786, *B. C. Ap.*, 591, 330.

Thornton to Granville, June 30, 1873, *B. C. Ap.*, 252, Fish's views on right of British claim to regulations, 318.

Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, Bancroft Davis on right of British claim to regulations, 318; Gray, 319.

Trade privileges in foreign countries, 346.

Treaties cited: Special Agreement of 1909, meaning of articles 2 and 4, DRAGO, 340–41; LAMMASCH, 339–40. Treaty of 1763, France-Great Britain, *B. C. Ap.*, 8, 5th sec., French shore, FITZPATRICK, 351; *B. C. Ap.*, 11, arts. 4, 5, French shore, 352. Treaty of 1778, United States-France, *B. C. C. Ap.*, 3, French shore, 350. Treaty of 1783 is not partition but grant, 303. Treaty of 1818, regulations prejudicial to Americans would be breach of, 337. Treaty of 1904, France-Great Britain, *B. C. Ap.*, 48, French shore, 359. Treaty of Utrecht, 1713, *B. C. Ap.*, 7, art. 13, French shore, 351.

Ultra vires, municipal legislation violative of treaty is, 344.

United States: asserted jurisdiction of Great Britain in 1822, 297; asserts no regulations can be passed without concurrence, 294; consent to regulations can not be compelled, 315–16; dropped partition theory in its argument, 305. Treaties of. *See* Treaties cited.

Utrecht, treaty of. *See* Treaties cited.

War of 1812 abrogated 1783 treaty, 304.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 2, pp. 14–15, 292, 363–393. (June 6, 13, 16, 1910.)

Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 68, motives in 1818, 386–7.

Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 64, 65, object of 1818 and 1783 treaties, 385.

Agents, rights of, 389.

Aliens in crews: British argument, 380–1; American argument, 382–3.

American fishermen and inhabitants only grantees of treaty rights, 389.

“American fishermen”: “Inhabitants” in 1818 treaty, 365. Means persons actually fishing, 384. Treaty of 1783, *B. C. Ap.*, 13, 383. Treaty of 1818, *B. C. Ap.*, 30, and treaty of 1854, *B. C. Ap.*, 36, 384. Treaty of 1871, *B. C. Ap.*, 39, 385.

Bathurst, Adams to, Sept. 25, 1815, *B. C. Ap.*, 68, motives in 1818, 386–7.

Bond-Hay convention, Nov. 8, 1902, *B. C. Ap.*, 46, rejection, 366.

Cases cited: Duchess of Norfolk’s case, *Year Book Henry VII*, 387, 388; Wickham v. Hawker, 7 *M. & W.*, *Ex. Rep.*, 63, 387–8.

“Citizens,” commercial privileges of, 390–2.

Commercial privileges, “citizens,” “inhabitants,” 390–392.

Construction of 1818 treaty should be strict, 363.

Crews: Aliens in: American argument, 382–3. British argument, 380–381.

From Newfoundland, no treaty right to, 374. Newfoundland, Gardner to Gloucester Board of Trade, July 7, 1906, *B. C. Ap.*, 502, 377–8. Newfoundland, Reid to Grey, July 12, 1907, *B. C. Ap.*, 509, 379. Shall be “inhabitants,” Root to Reid, June 30, 1906, *B. C. Ap.*, 498, 373–4.

Duchess of Norfolk’s case, *Year Book Henry VII*, 387, 388.

Durand, Root to, Oct. 19, 1905, *B. C. Ap.*, 492, “inhabitants,” or “vessels,” licences, 371–2.

Elgin to Governor of Newfoundland, Sept. 7, 1907, *B. C. Ap.*, 510, modus vivendi of 1907, 370.

Employment of foreigners: American argument, 382–3; British argument, 380–381.

Employment of Newfoundlanders by Americans, GRAY, LAMMASCH, 367–8.

Employment of Newfoundlanders: Foreign fishing vessels act, 1906, *B. C. Ap.*, 758, 368–9. Reid to Grey, July 12, 1907, *B. C. Ap.*, 509, 379.

Evarts to the President, May 17, 1880, *B. C. Ap.*, 284, Fortune Bay incident, “inhabitants,” 390.

Fishery for profit or pleasure, 387.

“Fishing” and “trading” distinguished, 391.

“Fishing” by noninhabitants, 383–393.

Fishing, definition of, 375–377; LAMMASCH, 375.

Fortune Bay incident: 365–66. Evarts to the President, May 17, 1880, *B. C. Ap.*, 284, 390.

Gardner to Gloucester Board of Trade, July 7, 1906, *B. C. Ap.*, 502, Newfoundland crews, inhabitants, 377–378.

General remarks on question 2, 14–15.

Gloucester Board of Trade, Gardner to, July 7, 1906, *B. C. Ap.*, 502, Newfoundland crews, inhabitants, 377–378.

Grantees of treaty right, class of, 389.

GRAY: Nationality of vessel, 375. Newfoundland acts against employment of Newfoundlanders by Americans, 367–8. Visit and search, 375.

Grey, Reid to: July 12, 1907, *B. C. Ap.*, 509, employment of Newfoundlanders, 379; Oct. 6, 1906, *B. C. Ap.*, 506, modus vivendi of 1906, 369.

Grey to Reid: Feb. 2, 1906, *B. C. Ap.*, 494, 496, 497, “inhabitants” or “vessels,” 372–3; June 20, 1907, *B. C. Ap.*, 507, “vessels” v. “inhabitants,” 378–9.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 2—Continued.

Hawker, Wickham *v.*, 6 *M. & W.*, *Ex. Rep.* 63, fishery for profit or pleasure, 387-8.

Hay-Bond convention, Nov. 8, 1902, *B. C. Ap.*, 46, rejection, 366.

"Inhabitants": "American fishermen", in 1783 treaty, 383; in 1818 treaty, 365, 384. "Crews" shall be, Root to Reid, June 30, 1906, *B. C. Ap.*, 498, 373-4. Evarts to the President, May 17, 1880, *B. C. Ap.*, 284, 390. Gardner to Gloucester Board of Trade, July 7, 1906, *B. C. Ap.*, 502, 377-8. Or "vessels," Grey to Reid: Feb. 2, 1906, *B. C. Ap.*, 494, 496, 497, 372-3; June 20, 1907, *B. C. Ap.*, 507, 378-9. Treaty of 1783, *B. C. Ap.*, 13, treaty of 1818, *B. C. Ap.*, 30, treaty of 1854, *B. C. Ap.*, 36, 383-5. "Vessels" and, 374-377.

Inhabitants and American fishermen only grantees of treaty right, 365, 389.

"Inhabitants," commercial privileges of: 390-2. Treaty of 1815, *B. C. Ap.*, 29, 291.

"Inhabitants" or "vessels," Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, 371-2.

LAMMASCH: "Fishing," definition of, 375. Newfoundland acts against employment of Newfoundlanders by Americans, 368.

Licenses discontinued: Newfoundland, act of 1905, *B. C. Ap.*, 757, 366.

Licenses, Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, 371-2.

Modus vivendi: 1906, *B. C. Ap.*, 506, 369-371; Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 369. 1907, *B. C. Ap.*, 510, 370; Elgin to governor of Newfoundland, Sept. 7, 1907, *B. C. Ap.*, 510, 370.

Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 64, 65, object of 1818 and 1783 treaties, 385.

Motives in 1818: 385; Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 68, 386-7.

Nationality of vessel, GRAY, 375.

Newfoundland: Act of 1905, *B. C. Ap.*, 757, licenses discontinued, 366; act of 1906, *B. C. Ap.*, 758, foreign fishing vessels act, employment of Newfoundlanders, 368-9.

Newfoundland can legislate for Newfoundlanders, 392-3.

Newfoundland, Governor of, Elgin to, Sept. 7, 1907, *B. C. Ap.*, 510, modus vivendi of 1907, 370.

Newfoundlanders: Employment of, by Americans: Foreign fishing vessels act, 1906, *B. C. Ap.*, 758, 368-9. GRAY, LAMMASCH, 367-8. Newfoundland can legislate for, 392-3. Reid to Grey, July 12, 1907, *B. C. Ap.*, 509, 379.

Norfolk, case of Duchess of, *Year Book, Henry VII*, 387, 388.

Origin of question 2, 292.

President, Evarts to the, May 17, 1880, *B. C. Ap.*, 284, Fortune Bay incident, "inhabitants," 390.

Reid, Grey to, Feb. 2, 1906, *B. C. Ap.* 494, 496, 497, June 20, 1907, *B. C. Ap.*, 507, "vessels" *v.* "inhabitants," 372-3, 378-9.

Reid, Root to, June 30, 1906, *B. C. Ap.*, 498, "crews" shall be "inhabitants," 373-4.

Reid to Grey: July 12, 1907, *B. C. Ap.*, 509, employment of Newfoundlanders, 379. Oct. 6, 1906, *B. C. Ap.*, 506, modus vivendi of 1906, 369.

Root, Grey to, Feb. 2, 1906, *B. C. Ap.*, 494, 496, 497, "inhabitants" or "vessels," 372-3.

Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, right of American "vessels," licenses, 371-2.

Root to Reid, June 30, 1906, *B. C. Ap.*, 498, "crews" shall be "inhabitants," 373-4.

Search, visit and, GRAY, 375.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 2—Continued.

Servants, rights of, 389.

Statutes cited: *Newfoundland*: Act of 1905, *B. C. Ap.*, 757, licenses discontinued, 366; foreign fishing vessels act, 1906, *B. C. Ap.*, 758, employment of Newfoundlanders, 368-9.

"Trading" and "fishing" distinguished, 391.

Treaties cited, 1783, Great Britain-United States, *B. C. Ap.*, 18, "inhabitants" "American fishermen," 383. 1794, Great Britain-United States, *B. C. Ap.*, 20, "citizens" with regard to commercial privileges, 390. 1815, Great Britain-United States, *B. C. Ap.*, 29, "inhabitants" with regard to commercial privileges, 391. 1818, Great Britain-United States, *B. C. Ap.*, 30, "inhabitants." "American fishermen," 384; should be strictly construed, 363. 1854, Great Britain-United States, *B. C. Ap.*, 36, "inhabitants," 384-5. 1871, Great Britain-United States, *B. C. Ap.*, 41, "citizens" with regard to commercial privileges, 391; "United States fishermen," 385.

Treaty rights extend only to inhabitants of United States, 365.

Two-fold nature of question, 364.

"Vessels" or "inhabitants:" 374-377. Grey to Reid: Feb. 2, 1906, *B. C. Ap.*, 494, 496, 497, 372-3; June 20, 1907, *B. C. Ap.*, 507, 378-9. Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, 371-2.

Visit and search, GRAY, 375.

Wickham v. Hawker, 7 *M. & W.*, *Ex. Rep.*, 63, fishery for profit or pleasure, 387-8.

Questions 3 and 4, pp. 15-16, 393-406. (June 6, 16, 1910.)

Canada, Revised Statutes 1906, *B. C. Ap.*, 651, report, 395. •

"Conditional" equivalent of "modus", 406.

"Conditional" in question 4, LAMMASCH, 405.

Durand, Root to, Oct. 19, 1905, *B. C. Ap.*, 492, Newfoundland's powers limited, 398.

Entry and report excused if impossible, 401.

Entry and report, 1775, Imperial statute, *B. C. Ap.*, 543, 402.

Entry into harbor requires report, universal rule, 394.

Exemption of local fishing vessels from light dues, Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1007, 404.

Great Britain, statutes of. See Statutes cited, *Imperial*.

Grey, Reid to, Oct. 6, 1906, *B. C. Ap.*, 506, light dues, report, possibility of, 396.

Grey to Reid: Feb. 2, 1906, *B. C. Ap.*, 495, light dues, report, 397-8. June 20, 1907, *U. S. C. Ap.*, 1007, exemption of local fishing vessels from light dues, 404.

International law writer cited: Twiss, *p. 304*, light dues, 403.

LAMMASCH: "Conditional" in question 4, 405.

Light dues: Colonial statutes, 403-4. Exemption of local fishing vessels from, Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1007, 404. First complaint of United States, 1905, 404. Grey to Reid, Feb. 2, 1906, *B. C. Ap.*, 495, 397-8. Modus vivendi of 1907, 396. Not condition precedent to fishing, Root to Reid, June 30, 1906, *B. C. Ap.*, 501, 398. Not inconsistent with treaty rights, 398. Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 396. Sabine's report, *U. S. C. Ap.*, 1206, 1276, 404. T. Twiss, *p. 304*, 403.

Meaning of questions 3 and 4, 393-4.

"Modus" equivalent of "conditional," 406.

Modus vivendi, 1907, light dues, report, 396.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Questions 3 and 4—Continued.*

Negotiators, intention of in 1818, as basis of United States argument, 399-400. New Brunswick, statutes of. *See* Statutes cited.

Newfoundland's powers limited, Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, 398.

Newfoundland, statutes of. *See* Statutes cited.

Nova Scotia, statutes of. *See* Statutes cited.

Questions 3 and 4 may be considered together, 393-4.

Reid, Grey to: Feb. 2, 1906, *B. C. Ap.*, 495, light dues, report, 397-8, June 20, 1907, *U. S. C. Ap.*, 1007, exemption of local fishing vessels from light dues, 404.

Reid, Root to, June 30, 1906, *B. C. Ap.*, 501, light dues and report not condition precedent to fishing, 398.

Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, light dues, report, possibility of, 396.

Report and entry at customhouse: Colonial statutes, 395. Excused if impossible, 401. Imperial statute, 1775, *B. C. Ap.*, 543, 402. Not condition precedent to fishing, Root to Reid, June 30, 1906, *B. C. Ap.*, 501, 398.

Report: Canada, Revised Statutes, 1906, *B. C. Ap.*, 651, 395. Grey to Reid, Feb. 2, 1906, *B. C. Ap.*, 495, 397-8. Modus vivendi of 1907, 396. Not inconsistent with treaty rights, 398. Possibility of, Reid to Grey, Oct. 6, 1906, *B. C. Ap.*, 506, 396. Required upon entry into harbor, universal rule, 394.

Root to Reid, June 30, 1906, *B. C. Ap.*, 501, light dues and report not condition precedent to fishing, 398.

Root to Durand, Oct. 19, 1905, *B. C. Ap.*, 492, Newfoundland's powers limited, 398.

Sabine's report, light dues, *U. S. C. Ap.*, 1206, 1276, 404.

Servitudes as basis of United States argument, 399-400.

Statutes cited: *Canada*: Revised Statutes 1906, *B. C. Ap.*, 651, report, 395. *Imperial*: 1775, *B. C. Ap.*, 543, entry and report, 402. *New Brunswick*: 1810, *B. C. Ap.*, 603, light dues, 404. *Newfoundland*: 1834, *B. C. Ap.*, 694, light dues, 404; 1839, *B. C. Ap.*, 697, light dues, 404; 1852, *B. C. Ap.*, 699, light dues, 404; 1855, *B. C. Ap.*, 700, light dues, 404; 1898, *B. C. Ap.*, 733, report 395; 1899, *B. C. Ap.*, 754, light dues, 404; 1908, *B. C. Ap.*, 733, 395. *Nova Scotia*: 1787, *B. C. Ap.*, 591, light dues, 404; 1793, *B. C. Ap.*, 594, light dues, 404; 1809, *B. C. Ap.*, 602, light dues, 404; 1812, *B. C. Ap.*, 604, light dues, 404.

Twiss, p. 304, light dues, 403.

United States argument based on servitudes and intention of negotiators in 1818, 399.

Question 5, pp. 8, 16-20, 407-469. (June 6, 17, 1910.)

Acquiescence not basis of claim to Delaware Bay, 411.

Adams to American commissioners, July 28, 1818, *B. C. Ap.*, 84, "bays" not defined, 414.

Adams to Russell: 1822, *B. C. C. Ap.*, 163, "bays," not defined, 413. May 3, 1822, *B. C. C. Ap.*, 161, 413.

Alaska boundary arbitration, British position, maritime jurisdiction, 460-464; not inconsistent with present position, 464.

"Alleganean," case of, maritime jurisdiction, 4 *Moore's Int. Arb.*, p. 4333, 447.

American commissioners, Adams to, July 28, 1818, *B. C. Ap.*, 84, "bays" not defined, 414.

Argument of United States as to 6-mile bays, 419-422.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 5—Continued.

- Azuni, 1:205, maritime jurisdiction, 429.
- Baker, Bathurst to, Sept. 7, 1815, *B. C. Ap.*, 64, maritime jurisdiction, 3-mile limit, bays, 413.
- Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, maritime jurisdiction, 3-mile limit, bays, 413.
- Bay: Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 413. Biscay Bay, 434, 439. British contention, 407. British have always exercised jurisdiction over, 467. British position as to, always the same, 467. Chaleurs Bay, 417, 438. Chesapeake Bay, 411, 438, 447. Delaware, 411, 438. Hudson Bay, 439, 444. In a class by themselves as to jurisdiction, 466. In treaty of 1783 includes all bays, 411. Kent, p. 97, 416. Miramichi Bay, 438. Not defined, Adams to American commissioners, July 28, 1818, *B. C. Ap.*, 84, 414; Adams to Russell, 1822, *B. C. C. Ap.*, 163, and May 3, 1822, *B. C. C. Ap.*, 161, 413. "Of His Majesty's dominions" is purely geographical expression, 418. Spezia Bay, 439. Treaty of 1794, *B. C. Ap.*, 23, 412. United States contention as to, 17-18, 407. Wheaton, 417. *See Maritime jurisdiction.*
- Bays on Nova Scotia coast, 408-9.
- Behring Sea case, British position, maritime jurisdiction, 457.
- Biscay, Bay of, 434, 439.
- Bishop, *sec. 105*, maritime jurisdiction, 438.
- Blackburn's opinion in Conception Bay case, 415.
- Bhuntschli, *sec. 309*, maritime jurisdiction, 444.
- Bonfils, 299, maritime jurisdiction, 455.
- British contention, 407.
- British have always exercised jurisdiction over bays, 467.
- British position as to bays always same, 467.
- Burlamaqui, *vol. 3, ch. 8, art. IX*, maritime jurisdiction, 425.
- Bynkershoek, *ch. 2*, maritime jurisdiction, 425.
- Calvo, *T.*, *secs. 353, 355, 356, 357, 367*, maritime jurisdiction, 450.
- Cape Breton, 409.
- De Casaregis, maritime jurisdiction, 425.
- Cases cited: "Alleganean," 4 *Moore's Int. Arb.* 4333, 447. Conception Bay case, *L. R. 2 App. Cases (1877)* 394, 415. Moray Firth, 1906, 457-9. Queen v. Cunningham, *Bell's Crown Cases Reserved* 72, maritime jurisdiction, 434-437. Queen v. Keyn, *L. R. (1876) 2d Ex. Div.* 63, maritime jurisdiction, 440.
- Cauchy, maritime jurisdiction, 437.
- Chaleurs Bay: 417, 438. Lyman, 2:100, 417.
- Channel, St. George's, 444.
- Chesapeake Bay, 411, 438, 449.
- Chitty, maritime jurisdiction, 430.
- Conception Bay case, *L. R. 2 App. Cases (1877)* 394, 415.
- Continental Congress: Committee report, 1782, *B. C. C. Ap.*, 29, 3-league limit, 410. Resolution of, 1779, *B. C. C. Ap.*, 20, 3 league limit, 410.
- Commissioner's instructions regarding commercial treaty with Great Britain, 1779, *B. C. C. Ap.*, 23, 3-league limit, 410.
- Cunningham, Queen v., *Bell's Crown Cases Reserved*, 72, maritime jurisdiction, 434-437.
- de Cussy, 1856, 1:91, 97, *sec. 41*, maritime jurisdiction, 433.
- Dana's argument, 1877, Halifax arbitration, maritime jurisdiction, 443.
- Delaware Bay: 411, 438. Wheaton, 417.
- Despagnet, *sec. 413*, maritime jurisdiction, 451.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Question 5—Continued.*

- Farnham, *p. 25*, maritime jurisdiction, 454.
 Field, *p. 15*, maritime jurisdiction, 440.
 Fiore, *T.*, maritime jurisdiction, 438-9.
 FITZPATRICK: right of Americans to enter bays, 422.
 France, treaties of. *See* Treaties cited.
 Fuca Straits and Oregon boundary arbitration: maritime jurisdiction, 455;
 treaty providing for, 1846, *B. C. Ap.*, 32, 455.
 Galiani, maritime jurisdiction, 426-7.
 Godey, maritime jurisdiction, 452.
 Great Britain, treaties of. *See* Treaties cited.
 Grotius, *Bk. 2, ch. 3, sec. 7, 8*, maritime jurisdiction, 424.
 Gulf of Mexico, 444.
 Gulf of St. Lawrence, 409.
 Halifax arbitration, 1877: Dana's argument, maritime jurisdiction, 443.
 Hall, *p. 154*, maritime jurisdiction, 454.
 Halleck, *1:67, 191*, maritime jurisdiction, 441, 454.
 Hautefeuille, *1:57*, maritime jurisdiction, 434.
 Hecate Straits case, maritime jurisdiction, 464-6.
 Holtzendorff, *2:458*, maritime jurisdiction, 450.
 Hudson Bay, 439, 444.
 Imbart-Latour, *ch. 1, sec. 3, ch. 2, sec. 3*, maritime jurisdiction, 450.
 Institut de Droit International, 1894, 1895, maritime jurisdiction, 452.
 International law writers cited: Azuni, *1:205*, 429. Bishop, *sec. 105*, maritime jurisdiction, 438. Blackburn's opinion in Conception Bay case, 415. Bluntschli, *sec 309*, maritime jurisdiction, 444. Bonfils, 299, maritime jurisdiction, 455. Burlamaqui, *vol. 3, ch. 8, art. IX*, maritime jurisdiction, 425; Bykershoek, *ch. 2*, maritime jurisdiction, 425. Calvo, *T., secs. 353, 355, 356, 357, 367*, maritime jurisdiction, 450. De Casaregis, maritime jurisdiction, 425. Cauchy, maritime jurisdiction, 437. Chitty, maritime jurisdiction, 430. de Cussy, *1:91, 97, sec. 41*, maritime jurisdiction, 433. Despagnet, *sec. 413*, maritime jurisdiction, 451. Farnham, *p. 25*, maritime jurisdiction, 454. Field, *p. 15*, maritime jurisdiction, 440. Fiore, *T.*, maritime jurisdiction, 438-9. Galiani, maritime jurisdiction, 426-7. Godey, maritime jurisdiction, 452. Grotius, *Bk. 2, ch. 3, sec. 7, 8*, maritime jurisdiction, 424. Hall, *p. 154*, maritime jurisdiction, 454. Halleck, *1:167, 191*, maritime jurisdiction, 441, 454. Hautefeuille, *1:57* maritime jurisdiction, 434. Holtzendorff, *2:468*, maritime jurisdiction, 450. Imbart-Latour, *ch. 1, sec. 3, ch. 2, sec. 3*, maritime jurisdiction, 450. Kent, maritime jurisdiction, bays, 416-17. Klüber, *sec. 130, 131*, maritime jurisdiction, 430-431. Lapradelle, *Revue générale de droit international public, vol. 5*, maritime jurisdiction, 453. Lyman, *2:100*, 417. G. F. von Martens, *sec. 40, 41, 42*, maritime jurisdiction, 428-9. Massé, maritime jurisdiction, 431-432. Mérignac, maritime jurisdiction, 454. Nys, maritime jurisdiction, 453. Oppenheim, *1:246*, maritime jurisdiction, 454. Ortolan, *Bk. 2, ch. 8, p. 145, 158*, maritime jurisdiction, 437. Perels, *pp. 28, 34*, maritime jurisdiction, 446. Phillimore, *1:284*, maritime jurisdiction, 442. Puffendorf, *Bk. 4, ch. 5, sec. 8*, maritime jurisdiction, 424. Rayneval, *sec. 10*, maritime jurisdiction, 431. Riquelme, maritime jurisdiction, 433. Rivier, maritime jurisdiction, 452. Schücking, maritime jurisdiction, 452. Taylor, *sec. 229*, maritime jurisdiction, 453. Twiss, *p. 293 et seq.*, maritime jurisdiction, 445. Vattel, *sec. 289, 291, 294*, maritime jurisdiction, 425. Westlake, maritime jurisdiction, 454. Wharton, 267, maritime jurisdiction, 449. Wheaton, "Bays," King's Chambers, Delaware Bay, 417. Woolsey, *sec. 60*, maritime jurisdiction, 450.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.*Question 5—Continued.*

Jeffreys' map, 408.

Jurisdiction act of 1878, territorial waters, 441-2.

Jurisdiction, summary of statutes showing exercise of, 468.

Kent: "bays," 416; maritime jurisdiction, 416-17.

Keyn, *Queen v.*, *L. R.* 1876, 2 *Ex. Div.* 63, maritime jurisdiction, 440.

King's Chambers, Wheaton, 417.

Klüber, *sec.* 130, 131, maritime jurisdiction, 430-431.

Lapradelle, *Revue générale de droit international public*, vol. 5, maritime jurisdiction, 453.

Lyman, 2:100, Bay of Chaleur, 417.

Maps, Mitchell's, Jeffreys', 408.

Maritime jurisdiction: Alaska Boundary arbitration: British position, 460-464; not inconsistent with present position, 464. "Alleganean," case of, 4 *Moore's Int. Arb.*, 4333, 447. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, 413. British position, Behring Sea case, 457. Dana's argument, 1877, Halifax arbitration, 443. Definition prior to 1818: Azuni, 1:205, 429; Burlamaqui, vol. 3, ch. 8, art. IX, 425; Bynkershoek, ch. 2, 425; De Casaregis, 425; Galiani, 426-7; Grotius, *Bk.* 2, ch. 3, secs. 7, 8, 424; G. F. von Martens, *secs.* 40, 42, 41, 428-9; Puffendorf, *Bk.* 4, ch. 5, sec. 8, 424; Vattel, *sec.* 289, 291, 294, 425-6. Definition since 1818: Bishop, *sec.* 105, 438; Bluntschli, *sec.* 309, 444; Bonfils, 299, 455; Calvo, *secs.* 353, 355, 356, 357, 367, 450; Cauchy, 437; Chitty, 430; de Cussy, 1:91, 97, *sec.* 41, 433; Despagnet, *sec.* 413, 451; Farnham, p. 25, 454; Field, p. 15, 440; Fiore, 438-9; Godey, 452; Hall, 154, 454; Halleck, 1:167, 191, 441, 454; Hautefeuille, 1:57, 434; Holtzendorff, 2:468, 450; Imbart-Latour, ch. 1, *sec.* 3, ch. 2, *sec.* 3, 450; Klüber, *secs.* 130, 131, 430-431; Lapradelle, *Revue générale de droit international public*, vol. 5, 453; Massé, 431-432; Mérignhac, 454; Nys, 453; Oppenheim, 1:246, 454; Ortolan, *Bk.* 2, ch. 8, p. 145, 158, 437; Perels, pp. 28, 34, 446; Phillimore, 1:284, 442; Rayneval, *sec.* 10, 431; Riquelme, 433; Rivier, 452; Schücking, 452; Taylor, *sec.* 229, 453; Twiss, 293 *et seq.*, 445; Westlake, 454; Wharton, 267, 449; Woolsey, *sec.* 60, 450. Encyclopedia of the Laws of England, 455. Institut de Droit International, 1894, 1895, 452. Hecate Straits case, 464-6. Kent, 416-17; Moray Firth case, 1906, 457-9. Oregon Boundary and Fuca Straits Arbitration, 455. Treaty providing for, *B. C. Ap.*, 32, 455. *Queen v. Cunningham*, *Bell's Crown Cases Reserved*, 72, 434-437. *Queen v. Keyn*, *L. R.* 1876, 2 *Ex. Div.* 63, 440.

G. F. von Martens, *secs.* 40, 42, 41, maritime jurisdiction, 428-9.

Massé, maritime jurisdiction, 431-432.

Mérignhac, maritime jurisdiction, 454.

Mexico, Gulf of, 444.

Miramichi Bay, 438.

Mitchell's map, 408.

Moray Firth case, 1906, 457-9; does not affect present question, 459.

Nova Scotia coasts, bays on, 408-9.

Nys, maritime jurisdiction, 453.

Oppenheim, 1:246, maritime jurisdiction, 454.

Oregon Boundary and Fuca Straits Arbitration: maritime jurisdiction, 455; treaty providing for, 1846; *B. C. Ap.*, 32, 455.

Ortolan, *Bk.* 2, ch. 8, p. 145, 158, maritime jurisdiction, 437.

Paris. *See* Treaties cited.

Perels, pp. 28, 34, maritime jurisdiction, 446.

Finlay, Right Honorable Sir Robert Bannatyne—Continued.

Question 5—Continued.

- Phillimore, 1:284, maritime jurisdiction, 442.
 Puffendorf, *Bk. 4, ch. 5, sec. 8*, maritime jurisdiction, 424.
 Queen v. Cunningham, *Bell's Crown Cases Reserved*, 72, maritime jurisdiction, 434-437.
 Queen v. Keyn, *L. R. 2 Ex. Div. 63 (1876)*, maritime jurisdiction, 440.
 Rayneval, *sec. 10*, maritime jurisdiction, 431.
 Right of Americans to enter bays, FITZPATRICK, 422.
 Riquelme, maritime jurisdiction, 433.
 Rivier, maritime jurisdiction, 452.
 Russell, Adams to, 1822, *B. C. C. Ap., 163*, and May 3, 1822, *B. C. C. Ap., 161*, "bays" not defined, 413.
 St. George's Channel, 444.
 St. Lawrence, Gulf of, 409.
 Schücking, maritime jurisdiction, 452.
 Seward's speech, 1852, six-mile bays, 423.
 "Sight test" of maritime jurisdiction, Bishop, *sec. 105*, 438.
 Six-mile bays: Argument of United States as to, 419-422. Seward's speech, 1852, 423. Theory not sanctioned by international law, 423.
 Spain, treaties of. *See* Treaties cited.
 Spezia, Bay of, 439.
 Statutes cited: *Imperial*: Territorial waters jurisdiction act of 1878, 441-2.
 Summary of statutes showing exercise of jurisdiction, 468.
 Taylor, *sec. 229*, maritime jurisdiction, 453.
 Territorial waters jurisdiction act of 1878, 441-2.
 Three-league limit: Commissioner's instructions regarding commercial treaty with Great Britain, 1779, *B. C. C. Ap., 23*, 410. Continental Congress, committee report, 1782, *B. C. C. Ap., 29*, 410. Resolution of Continental Congress, 1779, *B. C. C. Ap., 20*, 410.
 Three-mile limit: Bathurst to Baker, Sept. 7, 1815, *B. C. Ap., 64*, 413. Certain as to general coast-line, 466.
 Treaties cited: Utrecht, 1713, Great Britain-France, fishing off Nova Scotia, *B. C. Ap., 6*, bays, 409. 1763, Great Britain-France-Spain, *B. C. Ap., 7*, varying jurisdictional limits off shore of Gulf of St. Lawrence, Nova Scotia, Cape Breton, 409-10. 1794, Great Britain-United States, *B. C. Ap., 23*, bays, 412.
 Twiss, *p. 293 et seq.*, maritime jurisdiction, 445.
 United States, contention as to bays, 17-18, 407.
 United States, treaties of. *See* Treaties cited.
 Utrecht, Treaty of. *See* Treaties cited.
 Vattel, *secs. 289, 291, 294*, maritime jurisdiction, 425-6.
 Westlake, maritime jurisdiction, 454.
 Wharton, 267, maritime jurisdiction, 449.
 Wheaton, "bays," King's Chambers, Delaware Bay, 417.
 Woolsey, *sec. 60*, maritime jurisdiction, 450.

Question 6, pp. 20-21, 469. (June 6, 17, 1910.)

- Bays not included in liberty of fishing on treaty coast, 469.
 "Liberty" of fishing on treaty coast does not include bays, 469.
 Treaty coast, bays not included in liberty of fishing on, 469.

Question 7, pp. 21-23, 469-471. (June 6, 17, 1910.)

- Commercial privileges, 470.
 United States seeks to change question, 469.

Robson, Sir William Snowden.

Question 1, pp. 1593-1722. (July 25, 26, 28, 1910.)

Adams, Bathurst to, Oct. 30, 1815, *B. C. Ap.*, 71, "in common," 1648.

Adams, Rush to, Aug. 12, 1824, *U. S. C. C. Ap.* 122, "in common," Franco-American controversy, 1718.

Adams, Gallatin to, Nov. 6, 1818, *B. C. Ap.*, 97, servitudes, 1659.

Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 67: "in common," 1646; regulation, 1626.

Adams to Rush, June 27, 1823, *B. C. Ap.*, 108, French fishery rights, 1632.

Adams to Russell, May 3, 1822, *B. C. C. Ap.*, 162, fisheries before 1783, 1612. Alexander, Captain, value of services, 1681.

American contention on divided sovereignty, servitudes, stated and discussed, 1594; based on grant and joint ownership, 1595.

American, Franco-, dispute of, 1821-3, 1629-31.

American independence, effect of, 1624.

Americans abandoned claim to joint sovereignty, 1596.

Bagot, Castlereagh to, Mar. 22, 1817, *B. C. C. Ap.*, 177, servitudes, 1659.

Bagot to Monroe, Nov. 27, 1816, *B. C. Ap.*, 77, regulation, 1627.

Baird's report, Dec. 6, 1852, *B. C. C. Ap.*, 181, regulations necessary, 1605.

Bathurst, Adams to, Sept. 25, 1815, *B. C. Ap.*, 67: "in common," 1646; regulation, 1626.

Bathurst to Adams, Oct. 30, 1815, *B. C. Ap.*, 71, "in common," 1648.

Bond's attitude, Sir Robert, 1598-1601.

Canadian acts complained of by United States, 1681.

Canning, Rush to, May 3, 1824, *B. C. Ap.*, 110, title of United States to take fish, 1632.

Cardwell's letter, Apr. 12, 1866, *B. C. Ap.*, 221, "in common," 1644.

Castlereagh to Bagot, Mar. 22, 1817, *B. C. C. Ap.*, 177, servitudes, 1659.

Chateaubriand, Gallatin to, Apr. 2, 1823, *B. C. Ap.*, 105, reply to French contentions, 1630.

Clauss, competency as authority, 1708-9.

Colombia-United States, treaty of 1909, servitudes, *B. C. C. Ap.*, 3, 207, 1661.

"Common fishery" v. "common of fishery," 1646-7.

"Common sea," 1607; Derby on, 1608.

Custom in servitudes, 1666, 1668-9, 1682, 1683, 1709.

Dawson, Urrutia to, Mar. 15, 1909, *B. C. C. Ap.*, 207, United States-Columbia treaty, servitudes, 1662.

Dawson to Urrutia, Mar. 23, 1909, *B. C. C. Ap.*, 207, United States-Columbia treaty, servitudes, 1662.

Definition of servitude, 1663.

Derby on "common sea," 1608.

Dominium: 1678; DRAGO, 1676; FITZPATRICK, 1676, 1677; LAMMASCH, 1676-7; LOHMAN, 1676.

DRAGO: Dominium, imperium, 1676. Effect of servitudes on sovereignty, 1674. Public and private property of state, 1679. Servitudes, French law, 1673.

Economic servitudes, 1655-6.

English writers do not mention servitudes prior to 1818, 1694-5.

Evarts to Welsh: Sept. 27, 1878, *O. A. Ap.*, 2280, Halifax award, 1652-3. Sept. 28, 1878, *U. S. C. Ap.*, 656-7, Fortune Bay, 1651-2.

Eviction of United States, FITZPATRICK, 1635.

"Exclusive" fishery of France, 1718-20.

"Exclusive right," LAMMASCH, 1719.

Executive acts complained of by United States, 1681, 1721.

Robson, Sir William Snowden—Continued.

Question 1—Continued.

Fish, Thornton to, June 3, 1870, *U. S. C. Ap.*, 597, colonial regulations, 1645. Fisheries before 1783, 1609–1615; after 1783, 1615–1622.

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"Franchise" defined, 1640.

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Ghent, negotiations of 1814 at, 1626–7.

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"Grampus," 1721.

GRAY: Limitation on sovereignty, 1688. Position of United States on servitudes, 1672. Servitude dependent on contract, 1667. Title of United States to take fish, 1633. Transfer of sovereignty, 1684.

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Imperium: 1678; DRAGO, 1676; FITZPATRICK, 1676–77; LAMMASCH, 1676–7; LOHMAN, 1676.

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Robson, Sir William Snowden—Continued.

Question 1—Continued.

1703; Fabre, 1711; Fiore, 1711; Fricker, 1711; Gareis, 1710; Gönner, 1704-5; Grotius, 1702; Hall, 1680, 1711; Hartmann, 1710, 1711; Heffter, 1710, 1711; Heilborn, 1710; Hollatz, 1711; Holtzendorff, 1711; Jellinek, 1711; Klüber, 1710, 1711; Von Liszt, 1711; Lomanaco, 1710, 1711; de Louter, 1711; Majer, 1704; Martens, 1669; F. de Martens, 1710; G. F. de Martens, 1710; von Martens, 1706; Merignhac, 1710; Neumann, 1679, 1710; Nys, 1711; Oppenheim, 1636; H. B. Oppenheim, 1678, 1710, 1711; L. Oppenheim, 1711; Phillimore, 1711; Pradier-Fodéré, 1710; Rivier, 1710, 1711; Römer, 1670; Rutter, 1704; Saalfeld, 1705; Schmalz, 1705; Schmelzing, 1705; Schmidt, 1704, 1711; Twiss, 1711; von Ullman, 1711; Vattel, 1703; Vitriarius, 1703; Wharton, 1711; Wolf, 1706; K. A. Zacharia, 1704; K. Zacharia, 1669.

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Law of case, FITZPATRICK, 1714.

Legislative acts complained of by United States, 1681, 1721.

"Liberty" defined, 1637-42.

Limitation of sovereignty, 1715-17, FITZPATRICK, 1688.

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"Partition of empire," theory abandoned by United States, 1596-7.

Permanence as element of servitude, 1701-2.

Personal servitudes in Roman law, 1696-1701.

Prædial servitudes in Roman law, 1696-1701.

Prædium dominans: 1698-1701. LAMMASCH, 1695.

Prædium serviens, LAMMASCH, 1695.

Property of state, public and private, DRAGO, 1679.

Reasonableness of British regulations, 1598-1602.

Regulations between years 1611-1783, 1783-1812, and after 1812, list of, *O. A. Ap.*, 2254, 1618.

Regulations: Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 67, 1626. After 1783, 1619. Always existed, 1622. American claim to take part in, 1597 et seq. Bagot to Monroe, Nov. 27, 1816, *B. C. Ap.*, 77, 1627. Colonial, Thornton to Fish, June 3, 1870, *U. S. C. Ap.* 597, 1645. Common agreement on, LAMMASCH, 1690. French, LAMMASCH, 1622. Great Britain will make reasonable, 1711-1715. Involve legislation, FITZPATRICK, 1691. Necessary, Baird's report, Dec. 6, 1852, *B. C. C. Ap.*, 181, 1605. Necessity for reasonable, 1600 et seq. Prior to 1783, 1614-1619.

Robson, Sir William Snowden—Continued.*Question 1—Continued.*

"Right" defined, 1637-42.

Rights of United States, antecedent, 1608-14, 1623.

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Root submits list of acts of Newfoundland complained of by United States, 1681.

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Sovereignty: Divided, 1594. Effect of servitudes on, DRAGO, 1674. Joint, 1596. Limitation of exercise of, FITZPATRICK, 1688. Limitation of United States position, 1686-92. Limitation on, GRAY, 1688. Of Great Britain under treaty of 1818, 1625. Partition of empire theory, 1596-7. Scope of limitation, 1715-17. Servitude a real restriction on, 1710. Sole, 1630. State as juristic personality and sovereign entity, 1672-6. Transfer of, 1684-5. Transfer of, GRAY, 1684.

Special Agreement of 1909, art. 4, 1600-1.

State as juristic personality and sovereign entity, 1672-6.

Robson, Sir William Snowden—Continued.

Question 1—Continued.

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Question 2, pp. 1722-68, 1925-6 (July 28, Aug. 2, 1910).

Adams, John Quincy: argument for treaty rights, 1725-6; humane and economic grounds for 1818 treaty rights, 1853.

Agents, question of employing, 1765.

Aliens: British statutes regarding, 1743. Discrimination against United States employment of, FITZPATRICK, 1766-7, 1925-6. Every nation has right to exclude, 1723. General and special prohibition against, LAMMASCH, 1761. In crews, LOHMAN, 1731. Legislation of United States against, 1756. May Newfoundland employ, 1925-6. *See* Statutes cited.

American position in 1905-6, 1757-9.

Burge, 1729.

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Citizen, subject, inhabitant, GRAY, 1736.

Crews: British must be three-fourths English, 1743; foreigners in, LOHMAN, 1731.

Droit de renvoi, Halleck, p. 493, 1728, 1762.

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Elder, British statutes on employment of aliens, 1743.

Robson, Sir William Snowden—Continued.

Question 2—Continued.

- FITZPATRICK: discrimination against United States, employment of aliens, 1766-7, 1925-6.
- GRAY: inhabitant, citizen, subject, 1736.
- Great Britain, statutes of. *See* Statutes cited, *Imperial*.
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- Inhabitant, citizen, subject, GRAY, 1736.
- Inhabitants of United States, effect of increase in, 1754.
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- LAMMASCH: General and special prohibition against foreigners, 1761. Intent of treaty, 1740.
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- LOHMAN: Foreigners in crews, 1731. Right under treaty, character of, 1729, 1737.
- Newfoundland has jurisdiction over noncitizens, 1760-1.
- Newfoundlanders, employment of aliens by, 1925-6.
- Noninhabitants: British crews must be three-fourths English, 1743. Right to employ on United States vessel, 1722-68, 1925-6. Rights of: Imperial Statute 1819, sec. 2, *B. C. Ap.*, 565, 1732; Imperial Statute 1824, sec. 2, *B. C. Ap.*, 567, 1733.
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- Political situation in 1818, 1731-5, 1737-9.
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- Right to fish not synonymous with right to trade, 1734.
- Root's position in 1905-6, 1757-8.
- Sovereignty, 1766.
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- Subject, citizen, inhabitant, GRAY, 1736.
- Tariff, United States regulations against Newfoundland, 1756.
- Trade, right to, not synonymous with right to fish, 1734.
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- Vessels and men distinguished, 1758-9.
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Questions 3 and 4, pp. 1768-1800. (July 28, 29, 1910.)

- Anchorage dues: protest against by Americans, 1781; statutes, 1790, *Nova Scotia B. C. C. Ap.*, 171, 173, 1780.
- Annapolis lighthouse (Nova Scotia) light dues levied in 1803, 1809, and 1812, 1780.
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Robson, Sir William Snowden—Continued.*Questions 3 and 4—Continued.*

Boston harbor, light dues in 1715, 1778.

Bounty, question of in this case, 1784.

Canso, gut of, American first protest against fees in 1806, 1780; Sabine's report, heavy dues in 1852, 1781.

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Clearance not necessary so far as Newfoundland is concerned, 1797-8.

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Distress, element of difference between questions 3 and 4, LAMMASCH, 1785.

Entry and report practically synonymous, 1796.

Fishing vessels, exemption from dues, 1783.

Great Britain, statutes of, *See* Statutes cited.

"Hovering" conducive to smuggling, 1770.

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LAMMASCH: Difference between questions 3 and 4, 1785; discrimination in Newfoundland act, 1834, 1782-3.

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New Brunswick, statutes of. *See* Statutes cited.

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Nontreaty coasts in question 4, 1768.

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Nova Scotia, statutes of. *See* Statutes cited.

Regulations. *See* Customs reports, Light dues.

Report and entry synonymous, 1796.

Robson, Sir William Snowden—Continued.

Questions 3 and 4—Continued.

Right of fishing must be exercised according to laws of fiscal defense, 1769.

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Trading and fishing vessels under questions 3 and 4, 1770.

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Treaty coasts, question 3 and, 1768.

Turner's contention that fishing vessels exempt from light dues, 1783.

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Question 5. Pp. 1800-1905, 2234-2239. (July 29, Aug. 1, 2, 12, 1910.)

Aberdeen, Everett to, Mar. 25, 1845, *B. C. Ap.*, 142, admission as to bays, 1834.

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Robson, Sir William Snowden—Continued.

Question 5—Continued.

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Robson, Sir William Snowden—Continued.

Question 5—Continued.

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- Great Britain's refusal to treat bays as territorial, 2234.
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- Hudson Bay, 1818, 1822.
- Hudson Straits, 1818.

Robson, Sir William Snowden—Continued.*Question 5—Continued.*

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Robson, Sir William Snowden—Continued.

Question 5—Continued.

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Robson, Sir William Snowden.

Question 5—Continued.

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Question 6, pp. 1905-1910. (Aug. 2, 1910.)

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Bays on southern and western coasts of Newfoundland not mentioned in 1818, 1909.

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Question 7, pp. 1910-1925. (Aug. 2, 1910.)

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Commercial privileges: must be given by special agreement, 1911; treaty of 1818 gives none, 1911; United States shows no title to, 1922-25.

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Fishing from trading vessel, 1912.

Fishing distinguished from trading by Great Britain, 1911.

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Hovering acts, FITZPATRICK, 1917.

LAMMASCH, treaty of 1818 only basis of award, 1919.

Municipal legislation not within scope of this tribunal, 1917.

Newfoundland's right to refuse right to sell bait, 1914.

Trader fishing imperils trading right, 1917.

Trading kept separate from fishing by Great Britain, 1911.

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Trading vessel, may inhabitant of United States fish from, 1912.

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Robson, Sir William Snowden—Continued.

Reply argument, pp. 2231–2239. (Aug. 12, 1910.)

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Alaska Packers' Association, 79 *Fed.*, 152, "in common," 2231. U. S. v. Winans, 73 *Fed. Rep.*, 72; 198 *U. S.*, 371, 2232.

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Root, Honorable Elihu.

Question 1, pp. 1923–2139. (Aug. 2, 4, 5, 8, 9, 11, 12, 1910.)

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Admission of British position by United States, 2096–2108.

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Aliens: right of, to hold property, LAMMASCH, 2033; rights to use shore,

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Root, Honorable Elihu—Continued.

Question 1—Continued.

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Root, Honorable Elihu—Continued.

Question 1—Continued.

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- Clauss, authority of, 2001; servitudes, 2125, 2130.
- Coast of Newfoundland from Cape Ray to Ramea Islands, 2066.
- Cod traps, 1978.
- Code civil of France, articles 637, 686, 697, 701, servitude, 2073-4.
- Coke's Lyttleton, servitudes, 2118-9.
- Colonial office to Foreign office, Feb. 12, 1887, *U. S. C. C. Ap.*, 320, French right, 2036.
- Columbia, treaties of. *See* Treaties cited.

Root, Honorable Elihu—Continued.

Question 1—Continued.

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 Conception Bay, 1957; controversy as to bait taking, affidavits, *U. S. C. Ap.*, 715, 716, 1963-4.
 Confederation, Articles of, "inhabitants," 1952.
 Congress of Vienna, 1815, river navigation, 2029.
 Constitutional difficulties, FITZPATRICK, 2114.
 Crampton, Malmesbury to, Aug. 10, 1852, *U. S. C. Ap.*, 519: views of British Government, 2084; admissions of U. S. position, p. 2109.
 Crampton, Sutton to, June 16, 1855, *B. C. Ap.*, 205, provincial regulations, 2057.
 Crampton to Clarendon, Apr. 25, 1856, *B. C. Ap.*, 210, 211, suggested change in Marcy's circular, 1932.
 Crampton to Governor General of Canada, June 28, 1855, *B. C. Ap.*, 206-7, local regulations, 2059, 2060.
 Crampton to Sutton, June 27, 1855, *B. C. Ap.*, 205-6: Marcy's circulars, 1931; regulations, 2059.
 "Creeks, bays, harbors," 1957.
 Crowdy to Pakington, Sept. 22, 1852, *U. S. C. C. Ap.*, 229, French rights, 2039.
 Cure and dry fish: Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 283, 2071; permanency of right, LAMMASCH, 2072.
 Darling to Molesworth, Sept. 29, 1855, *U. S. C. C. Ap.*, 250, provincial regulations, report of colonial law officers, 2070.
 Davis, Thornton, to: May 18, 1870, *U. S. C. Ap.*, 587, Canadian act of 1868, 2104. July 30, 1873, *U. S. C. C. Ap.*, 197, Newfoundland regulations, 2088-9.
 Decision of tribunal, practical bearing of, 1957.
 Delaware, statute of 1871, fishing regulations, 2044.
 Delaware, statutes of. *See* Statutes cited.
 Denmark, treaties of. *See* Treaties cited.
 Derby to Glover, June 12, 1884, *U. S. C. C. Ap.*, 297, French right, 2036.
 Despagne: *sec. 411*, basis of extension of sovereignty over sea, 2008; servitudes, 2126, 2131.
 Des Voeux to Stanhope, Nov. 24, 1886, *U. S. C. C. Ap.*, 319, French rights, 2036.
 Dena, servitudes, 2126, 2131.
 DRAGO: Duration of article 4, Special Agreement of 1909, 1999. "Inhabitants" and "people" convertible terms, treaty of 1783, art. 3. 1954. Sovereignty *v.* property right over sea, 2008.
 Dry and cure fish: Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 283, 2071; permanency of right, LAMMASCH, 2072.
 Duchess of Norfolk's case, *Year Book Henry VII*, 1942.
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 Elgin, MacGregor's reports to, Nov. 22, Dec. 29, 1906, *U. S. C. C. Ap.*, 360, 366, *modus vivendi* of 1906, 2138.
 English-French treaty of 1763, original use of word "liberty," *U. S. C. Ap.*, 52, 1944.
 Enragee, Point, 1973.
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Root, Honorable Elihu—Continued.

Question 1—Continued.

Evarts to Welsh: Sept. 28, 1878, *U. S. C. Ap.*, 652, 655, 657, Fortune Bay, 1933-4, 2090-1; Aug. 1, 1879, *U. S. C. Ap.*, 671, British regulations infringing American rights, 2092.

"Exclusiveness," "in common" distinguished from, GRAY, 1948.

Expert Commission, American member designated, 2041.

Fabre, servitudes, 2126, 2131.

Finland, Gulf of, 1951.

Finlay: On Americans fishing in bays, 2055. On analogy of travel and trading privileges, 2023-24. On French rights, 2041-2. On requirement of reasonable regulations and consequences therefrom, 1939. On right to make regulations, 1988.

Fiore, servitudes, 2126, 2131.

Fish-Thornton conversation, *B. C. Ap.*, 253, right to make regulations, 1936.

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Fish, Thornton to: Apr. 14, 1870, *U. S. C. Ap.*, 580, Canadian act of 1868, 2103. Apr. 22, 1870, *U. S. C. C. Ap.*, 581, Canadian act of 1868, 2103. May 26, 1870, *U. S. C. Ap.*, 589, Canadian act of 1868, 2104-5. June 19, 1873, June 20, 1873, *U. S. C. C. Ap.*, 195, 196, Newfoundland regulations, 2087-8.

Fish to Boutwell, Apr. 23, 1870, *U. S. C. C. Ap.*, 187, Boutwell circular, 2100-7.

Fish to Thornton: Apr. 21, 1870, *U. S. C. Ap.*, 581, Canadian act of 1868, 2103. June 25, 1873, *B. C. Ap.*, 252, Newfoundland regulations, 1936.

Fisheries convention, Russia-Japan, July 15, 1907, *O. A. Ap.*, 2326, 2021-3.

Fishery, history of, Hamilton to Newcastle, Sept. 28, 1853, *U. S. C. C. Ap.*, 247, 2084.

Fishery right a *sine qua non* of treaty of 1783, 1958.

Fishing rights, of Indians in United States: *U. S. v. Alaska Packers' Asso.*, 79 *Fed. Rep.*, 152, 2133. *U. S. v. J. G. Swan*, 50 *Fed. Rep.*, 108, 2133. *U. S. v. Winans*, 73 *Fed. Rep.*, 72, reversed 198 *U. S.*, 371, 2133.

Fitzherbert, fishery right essential to treaty of 1783, 1958.

FITZPATRICK: "Common law" in England in 1855, 2070. Constitutional difficulties, 2114. Discrimination in regulation, 1974. Limited class would enjoy treaty rights, 1955; property right in fish, 2018-19. References to Hague Tribunal of disputed regulations, 1994. Regulation in the treaty itself, 2063. Regulations outside and river fisheries, 2057-8. Saving clause in Newfoundland statutes, 1974-5. Sovereignty involves right to protect, 2004. Treaty of 1818 without "in common" might be exclusive, 1949.

Foreign fishing vessels acts (Newfoundland) 1872, 1887, 1889, 1892, 1893, 1898, 1905, *B. C. Ap.*, 704, 711, 717, 720, 730, 731, 757, 2085.

Foreign office, Colonial office to, Feb. 12, 1887, *U. S. C. C. Ap.*, 320, French right, 2036.

"Forever:" Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, 2012. Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 307, 2012.

Fortune Bay, 1933-5, 1962, 1970, 2090-95.

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Frankfort, treaties of. See Treaties cited.

Franklin, fishery right necessary to treaty of 1783, 1958.

French "off-season," LAMMASCH, 1969.

Root, Honorable Elihu—Continued.

Question 1—Continued.

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- "Full powers" to Adams to negotiate convention, Feb. 27, 1816, *U. S. C. Ap.*, 288, 2062.
- Fundy, Bay of, 1957.
- Gallatin, biography, 2034.
- Gallatin, to Adams, Nov. 6, 1818, *B. C. Ap.*, 97: "forever," 2012; refusal of Great Britain to renew grant of 1783, 2073.
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- Goulburn, biography of, 2032.
- Governor-General of Canada, Crampton to, June 28, 1855, *B. C. Ap.* 206-7, local regulations, 2059-60.
- Grand Bank, 2055.
- Grant in treaty of 1818 limits British sovereignty, 2015.
- Grant of 1783: British refusal to renew, Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, 2073. Fell with war of 1812, Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 274, 2060.
- Granted rights, viewpoint of United States, 1930.
- GRAY: Discrimination in regulations, 1974. Force of merely excluding acts, 2106. "In common" distinguished from "exclusiveness," 1948. Knowledge of servitudes by negotiators of 1818, 2131. Regulation in the treaty itself, 2063. Regulations outside and river fisheries, 2057-8. Treaty coasts, 2103. Treaty right unilateral, 1986. United States can renounce right, 2004.
- Great Britain: can not be sole judge of regulations, 2080; can not destroy or impair treaty right, 2020.
- Great Britain, statutes of. *See* Statutes cited, *Imperial*.
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- Great Britain's viewpoint stated, 1930.
- Greece, treaties of. *See* treaties cited.
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- Hall, servitudes, 2126.
- Hamilton, Bathurst to, June 21, 1819, *B. C. Ap.*, 99, order in council of 1819, 2083.
- Hamilton to Newcastle, Sept. 28, 1853, *U. S. C. C. Ap.*, 247, history of fishery, 2084.
- Hammond, Le Clerc to, Sept. 22, 1886, *U. S. C. C. Ap.*, 317, French rights, 2036.
- Hanover, treaties of. *See* Treaties cited.
- Hanseatic Republics, treaties of. *See* Treaties cited.

Root, Honorable Elihu—Continued.

Question 1—Continued.

"Harbors, bays, creeks," 1957.

Hartmann, servitudes, 2126, 2131.

Hawker, Wickham v., 7 M. & W. Ex. Rep. 63, right of fishery, 1942.

Heffter, servitudes, 2126, 2131.

Heilborn, servitudes, 2126.

Herring fishery, winter fishery, 1960-61.

Hollatz, servitudes, 2126, 2131.

Holtzendorf, sources of international law, 2123; servitudes, 2127, 2132.

Hoppin, Salisbury to, Apr. 3, 1880, U. S. C. Ap., 683; treaty of Washington, 2093; treaty limits of British sovereignty, 1935; rights of aliens to use shore, 1965; right of fishing in territorial waters, 2094.

Hudson Bay, 1957.

Huskisson, protocol of 1824, 1953.

Iddesleigh, d'Aubigny to, Sept. 20, 1886, U. S. C. C. Ap., 316, French rights, 2036.

"In common:" 1947-52, 2016-17, 2020. Adams to Bathurst, Jan. 22, 1816, U. S. C. Ap., 286, 1947. Argument of United States, 1947. Both sides agree as to ordinary use of, 1947. Distinguished from "exclusiveness," Gray, 1948. French right, 1950. In 1782-83 and reciprocity, Lammasch, 1949. Jay to Livingston, Oct. 24, 1782, B. C. C. Ap., 78, 1948. Omitted, treaty of 1818 might be exclusive, Fitzpatrick, 1949. Opposite to "exclusive" in treaty of 1818, 1947. Oswald to Townshend, Oct. 2, 1782, B. C. C. Ap., 71, 1948. Protocol 1824, U. S. C. C. Ap., 126, 1951. Rush, British argument, 6, 1948. de Vergennes to de Rayneval, Dec. 4, 1782, 1948.

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"Inhabitants of the United States" included British subjects resident therein, LAMMASCH, 1956.

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Interpretation of treaties: 2119-20; Queen v. Keyn, L. R. (1876) 2 Exch. Div. 63, 2122.

Islands, Bay of, 1957.

Italy, treaties of. See Treaties cited.

Iter and via in Roman law, 2114, 2118.

Japan-Russia: Convention concerning fisheries, July 15, 1907, O. A. Ap., 2326, 2021-3.

Jay, fisheries necessary to treaty of 1783, 1958.

Root, Honorable Elihu—Continued.*Question 1—Continued.*

Jay to Livingston, Oct. 24, 1782, *B. C. C. Ap.*, 78, "in common," 1948.

Jay treaty of 1794, *B. C. Ap.*, 20, trade and travel privileges, 2024.

Joint regulations: 2061-2, 2065, 2067; Great Britain and United States could easily agree on, 2136.

Joncas's report, 1883, *U. S. C. C. Ap.*, 606, purse seines, 1976.

Justinian's Digest, 2:65, "via," 2118.

Kent, sources of international law, 2123.

Keyn, *Queen v. L. R. (1876) 2 Exchequer Div.*, 63: 2053; claims to maritime jurisdiction, 2006; rule of construction, proof of, 2122.

Klüber, servitudes, 2127, 2130.

Knutsford to O'Brien, May 31, 1889, *U. S. C. C. Ap.*, 325, regulations, 2136.

Labrador: Boutwell circular, 2102; coast, regulations on, 1978; no regulations on coast of in 1783 or 1818, 2045, 2052.

LAMMASCH: American fishermen dependent upon American sovereignty, 2004. "Bancroft" treaties, 1956. Bank fishery, act of 1775, *B. C. Ap.*, 543, 2049. Claim of United States to veto regulations, 1994. "Common law" in England in 1855, 2070. Connection between permanency and exemption from regulation, 2012. Equality of rights of Great Britain and United States, 2019. Exclusiveness of French right, 2040. "French off season," 1969. General ideas of international law as basis for American claim, 1990. Hague Convention for pacific settlement of international disputes, art. 88, *U. S. C. Ap.*, 21, 1999. Implied reservation of sovereignty, 2016. "In common" in 1782-3 and reciprocity, 1949. "Inhabitants of United States" includes British subjects residing therein, 1956. Length of bank fishery season, 1973. Length of spawning season, 1976. Magdalen Islands, 1967. Marcy circular concerning complaints, 1933. Meaning of "inhabitants," 1953-4. Nets, 1970. Non-treaty coast, application of act of 1819 to, 2081. Periods in Newfoundland statute of 1862, 1969. Permanency of right to dry and cure, 2072. Perpetual obligation and transfer of sovereignty, 2013. Perpetual right in conveyance, 2014. Perpetuity of treaty right, 1986. Regulation in the treaty itself, 2063. Regulation outside and river fisheries, 2057-8. Restrictions in article 1, treaty of 1818, 2079-2080. Right of aliens to hold property, 2033. Rights in nontreaty waters, 2106. Rights of United States guarded by suspensive veto, 1995. Rights under treaties of 1854 and 1871, 1986. Special agreement of 1909, article 4, 1999. Trade and travel privileges, 2028. Treaty of 1818 in a special class, 1938.

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Liberty of 1783 fell with war of 1812, Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 273, 2060.

Licenses, fishing, Order in Council, Jan. 8, 1870, *B. C. Ap.*, 230-1, 2102.

Limit of British sovereignty in 1818 treaty, 2015.

Limits of regulation, by whom to be determined, 1938.

Limits on action of Great Britain: 1932-40; Evarts-Salisbury correspondence, *U. S. C. Ap.*, 652-687, 1933-5; Fish-Thornton correspondence, 1935-6; Marcy circulars, July 12, 1855, and Mar. 28, 1856, *B. C. Ap.*, 207, 209, 1931.

Limitation on Great Britain's right of regulation utterly destroyed by British argument, 1940.

Root, Honorable Elihu—Continued.

Question 1—Continued.

- Livingston, Jay to, Oct. 24, 1782, *B. C. C. Ap.* 78, "in common," 1948.
 Lomonaco, servitudes, 2127.
 Lower Canada, regulations in, 2053.
 Lyttleton, Coke upon, servitude, 2118.
 MacGregor, Elgin to, Aug. 8, 1906, *U. S. C. Ap.*, 986, Imperial statute of 1775, 2050.
 MacGregor's reports to Elgin, Nov. 22, Dec. 29, 1906, *U. S. C. C. Ap.*, 360, 366, *modus vivendi* of 1906, 2138.
 Magdalen islands: Boutwell circular, 2102; LAMMASCH, 1967; rights thereon, *U. S. C. C. Ap.*, 538, Halifax Commission, 1965.
 Malmesbury to Crampton, Aug. 10, 1852, *U. S. C. Ap.*, 519: British position, 2084; admissions of United States position, 2109.
 Mansfield's definition of international law, 2078.
 Marcy approved regulations, 2059.
 Marcy circulars, 1855, 1856, *B. C. Ap.*, 207, 209: 2056, 2058. As admissions by United States, 2096. Limits on Great Britain's power to regulate, 1931. Suggested changes: Crampton to Clarendon, Apr. 25, 1856, *B. C. Ap.*, 210-211, 1932; Crampton to Sutton, June 27, 1855, *B. C. Ap.*, 205-6, 1931.
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 Maritime jurisdiction: Basis of modern claim limited, 2006; Despagne, 2008; *Queen v. Keyn*, *L. R.* (1876) 2 *Exch. Div.*, 63, 2006.
 Martens, G. F. de, servitudes, 2127.
 Maryland statute of 1896, fishing regulations, *B. C. Ap.*, 793, 2044.
 Maryland, statutes of. See Statutes cited.
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 Massachusetts, statutes of. See Statutes cited.
 Mérignhac, servitudes, 2132.
 Mexico, Gulf of, 1957.
 Mexico, treaties of. See Treaties cited.
 Minister of marine of Canada, report, *U. S. C. Ap.*, 588, 2104.
 Miramichi bay, regulations, 2054.
 Modus vivendi of 1888, 2137.
 Modus vivendi of 1906: 1988, 2137; Anstruther's report, Dec. 4, 1906, *U. S. C. C. Ap.*, 366, 1962, 2139; MacGregor's reports to Elgin, Nov. 22, Dec. 29, 1906, *U. S. C. C. Ap.*, 360, 366, 2138.
 Modus vivendi of 1907, 2137.
 Molesworth, Darling to, Sept. 29, 1855, *U. S. C. C. Ap.*, 250, provincial regulations, reports of colonial law officers, 2070.
 Monroe, Bagot to, Nov. 27, 1816, *U. S. C. Ap.*, 289, joint regulations, 2065.
 Monroe, Bagot to, Dec. 31, 1816, *U. S. C. Ap.*, 292, negotiations, 2067.
 Monroe to Adams, Feb. 27, 1816, *U. S. C. Ap.*, 287, joint regulations, 2062.
 Municipal regulation of trade and travel privileges, reserved, 2024.
 Naples, Bay of, 1957.
 Negotiations of 1818: Bagot to Monroe, Dec. 31, 1816, *U. S. C. Ap.*, 292, 2067. British articles, *U. S. C. Ap.*, 312, 2062-3. British Commissioners to Castle-reagh: report, *B. C. Ap.*, 86, 1945, 2075; some reports not furnished present court, 2074. Instructions to United States Commissioners, *U. S. C. Ap.*, 304, 2012. Memorandum of United States Commissioners, *U. S. C. Ap.*, 314, 2064.
 Negotiators in 1818 did not intend Great Britain to have power to restrict, 2031.

Root, Honorable Elihu—Continued.

Question 1—Continued.

- Netherlands, treaties of. *See* Treaties cited.
- Nets, use of, LAMMASCH, 1970.
- Neumann, servitudes, 2127.
- New Brunswick, regulations, 2054.
- Newcastle, Hamilton to, Sept. 28, 1853, *U. S. C. C. Ap.*, 247, history of fishery, 2084.
- Newcastle to Bannerman, Aug. 3, 1863, *U. S. Ap.*, 1082, regulations ineffective outside 3 miles, 2086.
- Newfoundland attempting to get rid of treaty burden, 1987.
- Newfoundland, coast from Cape Ray to Ramea Islands, 2066.
- Newfoundland legislation: Bait: act of 1862, *B. C. Ap.*, 702, 1968; act of 1876 (Sunday statute) *B. C. Ap.*, 707, 1971; act of 1884, *B. C. Ap.*, 709, 1970; consolidated statutes, 1892, sec. 9, *U. S. C. Ap.*, 176, 1973; regulations, 1908, secs. 25, 54, 62, 63, 78, *U. S. C. Ap.*, 202, 206, 208, 209, 1970, 1972, 1977-8. Clause saving treaty rights, act of 1862, *B. C. Ap.*, 702, 2085. Foreign fishing vessels acts: Consolidated statutes, 1872, *B. C. Ap.*, 704, 2085; act of 1887, *B. C. Ap.*, 711, 2085; act of 1889, *B. C. Ap.*, 717, 2085; act of 1892, *B. C. Ap.*, 720, 2085; act of 1893, *B. C. Ap.*, 730, 2085; act establishing department of Marine and Fisheries, 1898, *B. C. Ap.*, 731, 2085; act of 1905, *B. C. Ap.*, 757, 2085. Purpose of, Winter, 1980. Resolution of 1876, French rights, *U. S. C. C. Ap.*, 276, 2039. Treaty of Washington: acts adopting: May 5, 1873, *B. C. Ap.*, 705, 1935; Mar. 28, 1874, *B. C. Ap.*, 706, 1937, 2089. *See also* Statutes cited.
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- Nontreaty waters, rights in, LAMMASCH, 2106.
- Norfolk, case of Duchess of, *Year Book Henry VII*, 1942.
- Nova Scotia, regulations, 2053.
- O'Brien, Knutsford to, May 31, 1889, *U. S. C. C. Ap.*, 325, regulations, 2136.
- Olivart, servitudes, 2132.
- Oppenheim, servitudes, 2132.
- H. B. Oppenheim, 2127.
- L. Oppenheim, 2127.
- Orders in Council: Mar. 10, 1670, Newfoundland, *B. C. Ap.*, 519, subjection to regulations, 2046; June 19, 1819, *U. S. C. Ap.*, 114, no regulation, 2081, 2082; Jan. 8, 1870, fishing licenses, *B. C. Ap.*, 230-1, 2102.
- Orinoco River, 2029.
- Oswald, fishery right essential to 1783 treaty, 1958.
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Root, Honorable Elihu—Continued.

Question 1—Continued.

- Pakington, Crowdy to, Sept. 22, 1852, *U. S. C. C. Ap.*, 229, French rights, 2039.
- Parana River, 2029.
- Partition of empire theory, Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 274, 2009–10.
- “People” and “inhabitants” equivalent of “American fishermen,” DRAGO, 1955.
- Permanency of right to dry and cure, LAMMASCH, 2072.
- Permanency of treaty right: 2011, 2013–2020, LAMMASCH, 1986; and exemption from regulation, LAMMASCH, 2012; as conveyance, 2014; Goulburn and Robinson’s report, Sept., 1818, *B. C. Ap.*, 86, 2012–3; instructions to negotiators of 1818, *U. S. C. Ap.*, 304, 2012; LAMMASCH, 1986; Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 2012.
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- Personification of “vessel” in statutes: Act of 1775, *B. C. Ap.*, 545, act of 1819, *B. C. Ap.*, 565, 1956.
- Phillimore: servitudes, 2127; sources of international law, 2123.
- Placentia Bay, 1970.
- Point Enragee, 1973.
- Point of view of United States and Great Britain, 1930.
- Police regulation defined, 1938.
- Police regulations, right to make, by Newfoundland, Fish to Thornton, June 25, 1873, *B. C. Ap.*, 252, 1936.
- Porcupine River, 2029.
- Portugal, treaties of. *See* Treaties cited.
- Pradier-Fodéré, servitudes, 2132.
- Prince Edward Island, no regulations, 2053.
- Property, right of aliens to hold, LAMMASCH, 2033.
- Property right in fish, FITZPATRICK, 2018–19.
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- Prussia, treaties of. *See* Treaties cited.
- Queen *v.* Keyn, *L. R. (1876) 2 Exch. Div.*, 63: 2053; maritime jurisdiction, 2006; rule of construction, proof of, 2122.
- Quero. *See* Banquereau.
- de Rayneval, de Vergennes to, Dec. 4, 1782, *B. C. C. Ap.*, 110, “in common,” 1948.
- Real right, treaty right is, 2111–13.
- “Reasonableness” in regulation, concession of, by Great Britain is limitation of sovereignty, 2116.
- Reasonableness: is limitation on regulations, 1939; obligation of in regulations, 1988–9.
- Reciprocity and “in common,” LAMMASCH, 1949.
- Regulations: American fishermen not subject to, 2055. Approved by Marcy, 2059. British position, sovereignty controls, 1939. British right of, in Fortune Bay, 2090–95. Claim of United States to veto, LAMMASCH, 1994. Connection between exemption from, and permanency of right, LAMMASCH, 2012. Darling to Molesworth, Sept. 29, 1855, *U. S. C. C. Ap.* 250, 2070. Did not exist on Newfoundland or Labrador coasts in 1783 or 1818, 2045, 2052. Did not exist prior to 1818, 2054. Discrimination in, GRAY, FITZPATRICK, 1974. Fortune Bay, 1933. Great Britain and United States, could easily agree on, 2136. Great Britain not sole judge, 2080. Ineffective outside 3 miles, Newcastle to Bannerman, Aug. 3, 1863, *S. U. C. Ap.*, 1082,

Root, Honorable Elihu—Continued.**Question 1—Continued.**

2086. In treaty itself, LAMMASCH, GRAY, FITZPATRICK, 2063. Joint, 2061-2, 2065 2067. Knutsford to O'Brien, May 31, 1889, *U. S. C. C. Ap.*, 325, 2136. Labrador coast, 1978. Limit must be clearly defined, 2135-6. Limits on right of Great Britain to make, 1931, 1932, 1935-6; by whom to be determined, 1938. Local, Crampton to Governor General of Canada, June 28, 1855, *B. C. Ap.*, 206-7, 2059-60. Lower Canada, 2053. Marcy circular, 1931, 1933. Must be reasonable, 1939, 1988-9, 2078-9. New Brunswick, 2054. Newfoundland regulations, Thornton to Davis, July 30, 1873, *U. S. C. C. Ap.*, 197, 2088-9; Thornton to Fish, June 19, 20, 1873, *U. S. C. C. Ap.*, 195, 196, 2087-8; Fish to Thornton June 25, 1873, *B. C. Ap.*, 252; 1936. Newfoundland, "Trade" policy in, 1983. New Hampshire, 1687, *B. C. Ap.*, 772, 2044. New Jersey, 1826, *B. C. Ap.*, 785, 2044. New Plymouth, 1668, 1670, 1672, 1677, *B. C. Ap.*, 770-1, 2044. New York, 1772, *B. C. Ap.*, 775, 2044. None in Prince Edward Island, 2053. Nova Scotia, 2053. Order in Council, June 19, 1819, *U. S. C. Ap.*, 114, 2081, 2082. Outside and river fisheries, FITZPATRICK, LAMMASCH, GRAY, 2057-8. Police, defined, 1938. Provincial, Russell to Sutton, *B. C. Ap.*, 205, May 25, 1855, 2056; Sutton to Crampton, June 16, 1855, *B. C. Ap.*, 205, 2057; Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 2065; Sutton to Russell, May 5, 1855, *B. C. Ap.*, 204, 2056. Reference to Hague Tribunal of disputed regulations, FITZPATRICK, 1994. Right to, can not be read into treaty grant, 2110-11. Rights of United States to, in treaty guarded by suspensive veto, LAMMASCH, 1995. Statutes: Attorney General's schedule of British, 2042-54; Delaware, 1871, *B. C. Ap.*, 788, 2044; imperial, 1819, art. 4, LAMMASCH 2081; memorandum of United States concerning *O. A. Ap.*, 2335, 2045; Newfoundland regulations, 1908, secs. 25, 78, 1970, 1972; Robson on statute of 1824, 2068-70; saving clause in Newfoundland, FITZPATRICK, 1974-5. U. S. concurrence in necessary, 2113-14. *See* Newfoundland legislation, and Newfoundland, local regulations.
- Repeal of act of 1824 and consequences, 2069-70.
- Reservation of sovereignty: implied, LAMMASCH, 2016; none in 1818 treaty, 2016.
- "Right," defined: Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 273, 1942-46; Robinson and Goulburn to Castlereagh, Sept. 1818, *B. C. Ap.*, 86, 1945.
- Right to regulate can not be read into treaty grant, 2110-2111.
- Rights of Great Britain and United States equal, LAMMASCH, 2019.
- Rights under treaties of 1854 and 1871, LAMMASCH, 1986.
- Rio, Bay of, 1957.
- River navigation: Congress of Vienna, 1815, 2029; treaty of 1871, *B. C. Ap.*, 39, 2029.
- Rivier, servitudes, 2127, 2131.
- Robinson, biography of, 2032.
- Robinson and Goulburn's report to Castlereagh, Sept. 1818, *B. C. Ap.*, 86: liberty and right, 1945; joint regulation, 2067; permanency of treaty right, 2012-13.
- Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92: 2075; permanency of right, 2012; regulations, 2065.
- Robson: admits that international law may be read into contract, 2121: definition of sovereignty, 2002; duration of article 4, special agreement of 1909, 2000; schedule of British regulations, 2042-54; statement of treaty right, 2005; statute of 1824, 2068-70.

Root, Honorable Elihu—Continued.

Question 1—Continued.

Rush: biography of, 2034; "in common," *B. A.*, 6, 1948.

Rush and Gallatin to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 307, "forever," 2012.

Rush, protocol of 1824, 1953.

Russell, Sutton to, May 5, 1855, *B. C. Ap.*, 204, provincial regulations, 2056.

Russell to Sutton, May 25, 1855, *B. C. Ap.*, 205, provincial regulations, 2056.

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St. George's Bay, 1957.

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Saint Lawrence River, 2029.

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Salisbury to Waddington, July 9, 1889, *U. S. C. Ap.*, 1083, French rights, 2035.

Salisbury to Welsh, Nov. 7, 1878, *U. S. C. Ap.*, 657-8, Fortune Bay, 1934, 1935, 2092.

Salisbury's admission of United States position, Apr. 3, 1880, *U. S. C. Ap.*, 684, 2110.

Sardinia, treaties of. *See* Treaties cited.

Saving clause in Newfoundland statutes, FITZPATRICK, 1974-5.

Scope of art. 4, Special Agreement of 1909, 1992-1999.

Seines, purse, Joncas's report, 1883, *U. S. C. C. Ap.*, 606, 1976.

Servitudes: 2123-4. Coke's Lyttleton, 2118-9. French theory, 2073.

Knowledge thereof by negotiations of 1818, GRAY, 2131. *See also* International law writers cited.

Shore, American rights to, Bond's speech, Apr. 7, 1905, *U. S. C. C. Ap.*, 411, 1966.

Smith, Hugh M., designated member of commission under article 3, 2041.

Sovereign rights, viewpoint of Great Britain, 1930.

Sovereignty: 2001 et seq. American fishermen dependent upon American, LAMMASCH, 2004. Austin's definition, 2002-3. Basis of extension of, over seas, Despagnet, *sec.* 411, 2008. Controls in regulation, British position, 1989. Involves right to protect, FITZPATRICK, 2004. No reservation of, in 1818 treaty, 2016. Robson's definition, 2002. Sovereignty, transfer of, and perpetual obligation, LAMMASCH, 2013. *v.* property right, DRAGO, 2008.

Sovereignty of Great Britain: Argument based thereon results in no limitation to regulation, 1941. "Reasonableness" in regulation, concession of, by Great Britain, is limit on, 2116. Restrictions on, 2113, 2115. Treaty of 1818, limits, 2015. Salisbury, Apr. 3, 1880, *U. S. C. Ap.*, 633, 1935. United States not seeking to infringe upon, as a whole, 1930.

Spain, treaties of. *See* Treaties cited.

Spawning season, length of, LAMMASCH, 1976.

Special Agreement of 1909, art. 4, 1992-99; DRAGO, 1999; LAMMASCH, 1999; Robson, 2000.

Special class of treaties, treaty of 1818 is in, LAMMASCH, 1938.

Root, Honorable Elihu—Continued.*Question 1—Continued.*

Stanhope, Des Voeux to, Nov. 24, 1886, *U. S. C. C. Ap.*, 319, French rights, 2036.

Statutes cited: *Canada*: Act of 1868, *B. C. Ap.*, 628, 2101-5. *Delaware*: 1871, fishing regulations, *B. C. Ap.*, 788, 2044. *Imperial*: 1663, *B. C. Ap.*, 517, 2045-48; 1699, *B. C. Ap.*, 525, 2046, 2048; 1775, *B. C. Ap.*, 543, 2049, LAMMASCH, 2049; 1788, *B. C. Ap.*, 561, LAMMASCH, 2040; 1819, *U. S. C. Ap.*, 112, 2081; 1824, *B. C. Ap.*, 567, 2051; 1878, territorial waters act, *B. C. Ap.*, 574, 2007. *Maryland*: 1896, fishing regulations, *B. C. Ap.*, 793, 2044. *Massachusetts*: 1668, fishing regulations, *B. C. Ap.*, 770, 2043. *Newfoundland*: Bait: Act of 1862, *B. C. Ap.*, 702, 1968; act of 1876 (Sunday statute), *B. C. Ap.*, 707, 1971; act of 1884, *B. C. Ap.*, 709, 1970; act of 1887, *B. C. Ap.*, 711, 1961; consolidated statutes, 1892, sec. 9, *U. S. C. Ap.*, 176, 1973; regulations, 1908, secs. 25, 54, 62, 63, 78, *U. S. C. Ap.*, 202, 206, 208, 209, 1970, 1972, 1977-8. Clause saving treaty rights, act of 1862, *B. C. Ap.*, 702, 2085, Foreign fishing vessels acts: Consolidated statutes of 1872, *B. C. Ap.*, 704, 2085; act of 1887, *B. C. Ap.*, 711, 2085; act of 1889, *B. C. Ap.*, 717, 2085; act of 1892, *B. C. Ap.*, 720, 2085; act of 1893, *B. C. Ap.*, 730, 2085; act establishing department of marine and fisheries, 1898, *B. C. Ap.*, 731, 2085; act of 1905, *B. C. Ap.*, 757, 2085. Resolution of 1876, French rights, *U. S. C. C. Ap.*, 276, 2039. Treaty of Washington: Acts adopting: May 5, 1873, *B. C. Ap.*, 705, 1935; Mar. 28, 1874, *B. C. Ap.*, 706, 1937. *New Hampshire*: 1687, fishing regulations, *B. C. Ap.*, 772, 2044. *New Jersey*: 1826, fishing regulations, *B. C. Ap.*, 785, 2044. *New Plymouth*: 1668, 1670, 1672, 1677, fishing regulations, *B. C. Ap.*, 770-1, 2044. *New York*: 1772, fishing regulations, *B. C. Ap.*, 775, 2044.

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Stikine River, 2029.

Strachey, fishery right essential to 1783 treaty, 1958.

Subjects or citizens, inhabitants equivalent of, 1952.

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Sutton, Crampton to, June 27, 1855, *B. C. Ap.*, 205-6; Marcy circulars, 1931; regulations, 2059.

Sutton, Russell to, *B. C. Ap.*, 205, May 25, 1855, provincial regulations, 2056.

Sutton to Crampton, June 16, 1855, *B. C. Ap.*, 205, provincial regulations, 2057.

Sutton to Russell, May 5, 1855, *B. C. Ap.*, 204, provincial regulations, 2056.

Swan v. U. S., 50 *Fed. Rep.*, 108, treaty rights, 2133.

Sweden, treaties of. See Treaties cited.

Territorial sea, institute of international law, 2008.

Territorial waters act, 1878, *B. C. Ap.*, 574, 2007.

Territorial waters, right of fishing therein, Lord Salisbury, 2094.

Thornton-Fish conversation, *B. C. Ap.*, 253, right to make regulations, 1936.

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Thornton, Fish to: April 21, 1870, *U. S. C. Ap.*, 581, Canadian act of 1868, 2103. June 25, 1873, *B. C. Ap.*, 252, Newfoundland regulations, 1936.

Thornton to Davis: May 18, 1870, *U. S. C. Ap.*, 587, Canadian act of 1868, 2104. July 30, 1873, *U. S. C. C. Ap.*, 197, Newfoundland regulations, 2088-9.

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Root, Honorable Elihu—Continued.**Question 1—Continued.**

Thornton's admission of United States position, June 20, 1873, *U. S. C. C. Ap.*, 196, 2109.

Townshend, Oswald to, Oct. 2, 1782, *B. C. C. Ap.*, 71, "in common," 1948.

Three-mile limit, Newfoundland regulations ineffective outside of, Newcastle to Bannerman, Aug. 3, 1863, *U. S. C. Ap.*, 1082, 2086.

Trade and travel privileges: Finlay's argument on analogy, 2023-4. Principle of international law, LAMMASCH, 2028. Reservation of right of municipal control over, 2024. Treaty provisions (see memorandum of United States, *O. A. Ap.*, 2312.) *Great Britain and:* Austria, 1829 and 1838, 2025; Buenos Ayres, 1825, 2025; Colombia, 1825, 2025; Denmark, 1660 and 1670, 2025; France, 1786 and 1815, 2025; Frankfort, 1832, 2025; Mexico, 1826, 2025; Netherlands, 1815 and 1824, 2025; Portugal, 1642, 1654, and 1810, 2025; Spain, 1669, 2025; Sweden, 1654, 1661, and 1826, 2025; Two Sicilies, 1816, 2025. United States: 1794, Jay treaty, *B. C. Ap.*, 20, 2024-5; 1806, unratified treaty, *U. S. C. C. Ap.*, 19, 2024; 1815, *B. C. Ap.*, 29, 2024-5; 1871, Washington treaty, *B. C. Ap.*, 39, 2029. *United States and:* Argentine Confederation, 1853, 2025; Austria-Hungary, 1829, 2025, Brazil, 1828, 2025; Central America, 1825, 2025; Colombia, 1824, 2025; Denmark, 1826, 2025; Great Britain, *see supra*; Greece, 1837, 2025; Hanover, 1840, 2025; Hanseatic Republics, 1827, 2025; Netherlands, 1782, 2025; Portugal, 1840, 2025; Prussia, 1785, 1799, and 1828, 2025; Sardinia, 1838, 2025; Sweden and Norway, 1816 and 1827, 2025; Two Sicilies, 1855, 2025.

"Trade" policy in Newfoundland regulations, 1983.

Trading right contrasted with treaty right, 1985.

Travel and trading privileges. *See* Trade and travel privileges, 2023-2031.

Treaties cited: Argentine Confederation-United States, 1853, trade and travel privileges, 2025. Austria-Great Britain, 1829, 1838, trade and travel privileges, 2025. Austria-Hungary-Italy, 1878, fishing limit, 1974, 2030. Austria-Hungary-United States, 1829, trade and travel privileges, 2025. "Bancroft" treaties, LAMMASCH 1956. Brazil-United States, 1828, trade and travel privileges, 2025. Buenos Ayres-Great Britain, 1825, trade and travel privileges, 2025. Central America-United States, 1825, trade and travel privileges, 2025. Colombia-Great Britain, 1825, trade and travel privileges, 2025. Colombia-United States, 1824, trade and travel privileges, 2025; Denmark-Great Britain, 1660, 1670, trade and travel privileges, 2025. Denmark-United States, 1826, trade and travel privileges, 2025. France-Great Britain, 1713 (Utrecht) French rights, 2035; 1763, *U. S. C. Ap.*, 52, original use of "liberty," 1944; 1783, *B. C. Ap.*, 11, French rights, 2037; 1786, 1815, trade and travel privileges, 2025; 1863, *U. S. C. Ap.*, 52, 1944. Frankfort-Great Britain, 1832, trade and travel privileges, 2025. Great Britain-United States: 1783, *U. S. C. Ap.*, 23, analogous to French treaty, 1944, fishery right a sine quo non, 1958, DRAGO, article 3, 1954; 1794, Jay treaty, *B. C. Ap.*, 20, trade and travel privileges, 2024, 2025, regulation, 2031; 1806, unratified treaty, *U. S. C. C. Ap.*, 19, trade and travel privileges, 2024; 1815, *B. C. Ap.*, 29, trade and travel privileges, 2024, 2025, regulation, 2031-2, compared with treaty of 1818, 2073, 2076-7; 1818, article 1, 1928, compared with treaty of 1815, 2073, 2076-7, in a special class, LAMMASCH, 1938, restriction in, LAMMASCH, 2079-80; 1854, *U. S. C. Ap.*, 25, liberty and right, 1945; 1871 (of Washington), *B. C. Ap.*, 39, acts of Newfoundland adopting, May 5, 1873, Mar. 28, 1874, *B. C. Ap.*, 705, 706, 1935, 1937, 2089, river navigation in, 2029, Salisbury to Hoppin, Apr. 3, 1880, *U. S. C. Ap.*, 683, 2093; 1909, Special Agreement, article 4, 1992. Greece-United States,

Root, Honorable Elihu—Continued.*Question 1—Continued.*

1837, trade and travel privileges, 2025. Hanover-United States, 1840, trade and travel privileges, 2025. Hanseatic Republics-United States, 1827, trade and travel privileges, 2025. Japan-Russia, 1907, convention concerning fisheries, 2021-3. Mexico-Great Britain, 1826, trade and travel privileges, 2025. Netherlands-Great Britain, 1815, 1824, trade and travel privileges, 2025. Netherlands-United States, 1782, trade and travel privileges, 2025; Portugal-Great Britain, 1642, 1654, 1810, trade and travel privileges, 2025. Portugal-United States, 1840, trade and travel privileges, 2025. Prussia-United States, 1785, 1799, 1828, trade and travel privileges, 2025. Sardinia-United States, 1838, trade and travel privileges, 2025. Spain-France-Great Britain, 1763, French rights, 2035. Spain-Great Britain, 1669, trade and travel privileges, 2025. Sweden-Great Britain, 1654, 1661, 1826, trade and travel privileges, 2025. Sweden and Norway-United States, 1816, 1827, trade and travel privileges, 2025. Two Sicilies-Great Britain, 1816, trade and travel privileges, 2025. Two Sicilies-United States, 1855, trade and travel privileges, 2025. United States-France, 1778, *U. S. C. Ap.*, 92, French rights, 2035. United States, *see* Great Britain, *supra*.

Treaty coast: Boutwell circular, 2102; French and American, 1970; GRAY, 2103; Imperial statute, 1819, art. 4, LAMMASCH, 2081.

Treaty right: Can not be destroyed or impaired by Great Britain, 2020. Contrasted with trading right, 1985. National not individual, 2000. Nature of, 1985. Newfoundland legislation makes practically worthless, 1980-1. Permanent grant, 2011, 2013-2020. LAMMASCH, 1986, perpetual and unilateral, 1986. Real right, 2111-13. Robson's statement of, 2005. Saving clause in Newfoundland statutes, 2085. United States can control exercise of, 2003. Winter admits treaty right worthless, 1984.

Treaty rights: *U. S. v. Alaska Packers' Assn.*, 79 *Fed. Rep.*, 152, 2133; *U. S. v. J. G. Swan*, 50 *Fed. Rep.*, 108, 2133; *U. S. v. Winans*, 73 *Fed. Rep.*, 72, reversed, 198 *U. S.*, 371, 2133. Infringed by British regulations, Evarts to Welsh, Aug. 1, 1879, *U. S. C. Ap.*, 671, 2092.

Tribunal's duty to determine powers of Great Britain, 1930.

Two Sicilies, treaties of. *See* Treaties cited.

Yukon River, 2029.

Ullmann, servitudes, 2128, 2131.

Unilateral, treaty right is, GRAY, 1986.

United States admissions of British position, 2096-2108.

U. S. v. Alaska Packers' Assn., 79 *Fed. Rep.*, 152, treaty rights, 2133.

United States, treaties of. *See* Treaties cited.

United States can control exercise of treaty right, 2003.

United States can renounce right, GRAY, 2004.

United States' concurrence in regulations necessary, 2113-14.

United States has national not individual right in treaty, 2000.

United States position, Bathurst's admission of, *U. S. C. Ap.*, 274, 2108-9.

U. S. v. J. G. Swan, 50 *Fed. Rep.*, 108, treaty rights, 2133.

United States view-point stated, 1930.

U. S. v. Winans, 73 *Fed. Rep.*, 72, reversed, 198 *U. S.* 371, treaty rights, 2133.

Uruguay River, 2029.

Vattel, servitudes, 2129, 2131.

de Vergennes, to de Rayneval, Dec. 4. 1782, *B. C. C. Ap.*, 110, "in common," 1948.

"Vessel," personification of, in statutes, act of 1775, *B. C. Ap.*, 545, act of 1819, *B. C. Ap.*, 565, 1956.

Root, Honorable Elihu—Continued.

Question 1—Continued.

Veto of regulation, United States rights to suspensive, LAMMASCH, 1995.

Via and iter in Roman law, 2114, 2118.

Vienna, Congress of, 1815, river navigation, 2029.

Waddington, Salisbury to, July 9, 1889, *U. S. C. Ap.*, 1088, French rights, 2035.

Webster's memorandum, *U. S. C. Ap.*, 526, 1943.

Welsh, Evarts to: Sept. 28, 1878, *U. S. C. Ap.*, 652, 655, 657, Fortune Bay, 1933-4, 2090-1; Aug. 1, 1879, *U. S. C. Ap.*, 671, British regulation infringing American rights, 2092.

Welsh, Salisbury to, Nov. 7, 1878, *U. S. C. Ap.*, 657, 658. Fortune Bay, 1934, 1935, 2092.

Wharton, servitudes, 2131.

Wheaton, sources of international law, 2123.

Whiteway to House of Lords, Apr. 23, 1891, *U. S. C. C. Ap.*, 329 British act of 1824, 2052.

Wickham v. Hawker, 7 *M. & W. Ex. Rep.* 63, right of fishery, 1942.

Wilson and Tucker, servitudes, 2132.

Winans v. U. S., 73 *Fed. Rep.*, 72, reversed, 198 *U. S.*, 371, treaty rights, 2133.

Winter fishery, herring fishery is, 1960-61.

Winter, Sir James: American treaty right worthless, 1984; legislation regarding bultows not uniform, 1968; purpose of Newfoundland legislation, 1980.

Wolf, servitudes, 2129, 2132.

Question 2, pp. 2194-2207, 2216-18. (Aug. 12, 1910.)

Agents and servants, 2202-2204.

Aliens: Crews may be partly, 2202. Employment of: restrictions on, *B. C. Ap.*, 757, 758, *U. S. C. Ap.*, 197, 199, 2196; Robson's argument discussed, 2202-3; universal custom, 2201.

Cases cited: Duchess of Norfolk's case, *Year Book Henry VII*, agents and servants, 2205; Terre Haute Railroad case, right to employ aliens, 2194; Wickham v. Hawker, 7 *M. & W. Ex. Rep.* 63, agents and servants, 2205.

Chinese, danger of, on the coast, 2206.

Delaware and Maryland statutes, aliens fishing, 2206.

Difficulty of categorical answer to question 2, LAMMASCH, FITZPATRICK, 2216-18.

Duchess of Norfolk's case, *Year Book Henry VII*, 2205.

Employing Newfoundland fishermen: Reid to Grey, Oct. 6, 1906, July 12, 1907, *B. C. Ap.*, 506 and 509, FITZPATRICK, 2198, 2200.

Fishing is "industrial" enterprise, 2201.

FITZPATRICK: Difficulty of categorical answer to question 2, 2216-18. Hiring Newfoundland fishermen, 2198-2200. Structure of question 2, 2217-18.

Great Britain, statutes of. See Statutes cited, *Imperial*.

Grey: crews may be partly aliens, 2202.

Grey, Reid to, Oct. 6, 1906, July 12, 1907, *B. C. Ap.*, 506, 509, employing Newfoundland fishermen, 2198, 2200.

Hawker, Wickham v., 7 *M. & W. Ex. Rep.* 63, 2205.

LAMMASCH: Difficulty of categorical answer to question 2, 2216-18. Scope of question 2, 2199. Structure of question 2, 2216-18.

Maryland and Delaware statutes, aliens fishing, 2206.

Newfoundland fishermen, employing: Reid to Grey, Oct. 6, 1906, July 12, 1907, *B. C. Ap.*, 506, 509, FITZPATRICK, 2198, 2200.

Newfoundland restrictions on employment of aliens, *B. C. Ap.*, 757, 758, *U. S. C. Ap.*, 197, 199, 2196.

Root, Honorable Elihu—Continued.

Question 2—Continued.

Newfoundland, statutes of. *See* Statutes cited.
 Newfoundlander can ship in American crew, 2196.
 Norfolk, Duchess of, case, *Year Book Henry VII*, 2205.
 Practical bearing of question 2, 2195.
 Reid to Grey, Oct. 6, 1906, July 12, 1907, *B. C. Ap.*, 506, 509, employing Newfoundland fishermen, 2198, 2200.
 Right belongs to vessels not individual, 2205.
 Robson, employment of aliens, argument discussed, 2202-3.
 Scope of question 2: 2194. LAMMASCH, 2199.
 Servants and agents, 2202-2204.
 Statutes cited: *Imperial*: 1663, *B. C. C. Ap.*, 213, 2201; 1699, *B. C. Ap.*, 525, 2201, 2204; 1775, *B. C. Ap.*, 543, agents and servants, 2202, 2204. *Maryland and Delaware*, aliens fishing, 2206. *Newfoundland*: 1905, 1906, *B. C. Ap.*, 757, 758, employment of aliens, 2196; act of 1906, art. 67, *B. C. Ap.*, 758, employment of aliens, 2196.
 Structure of question 2, FITZPATRICK, LAMMASCH, 2216-2218.
 Terre Haute Railroad case, 2194.
 Wickham v. Hawker, 7 *M. & W. Ex. Rep.* 63, 2205.

Question 3, pp. 2207-2212. (Aug. 12, 1910.)

Basis of charge for light, harbor, and other dues, 2209-10.
 Canada charges no light dues, 2211.
 Discrimination in light, harbor, and other dues, 2211-12.
 Dues, harbor, light, and other, 2209-12; Newfoundland statutes, 2210.
 Duties should not be exacted from fishing vessels, 2208.
 Entry and report, 2207-10, FITZPATRICK, 2208.
 FITZPATRICK: report and entry, 2208.
 Great Britain-France treaty of 1839, regulations, 2207.
 Harbor, light and other dues, 2209-12; Newfoundland statutes, 2210.
 LAMMASCH: "report," 2209.
 Light dues not charged by Canada, 2211.
 Light, harbor, and other dues, 2209-12; Newfoundland statutes on, 2210.
 Modus vivendi with Canada of 1888, 2209.
 Newfoundland statutes, light, harbor, and other dues, 2210.
 North Sea Convention of 1882, regulations, 2207.
 Reasonableness of exemption of American fishing vessels from dues, 2211-2212.
 Regulations: Great Britain-France treaty of 1839, 2207; North Sea Convention of 1882, 2207.
 "Report," LAMMASCH, 2209.
 Report and entry: 2207-10; FITZPATRICK, 2208.
 Treaties cited: Great Britain-France, 1839, regulations, 2207; modus vivendi of 1888, 2209; North Sea Convention, 1882, regulations, 2207.

Question 4, pp. 2212-2216. (Aug. 12, 1910.)

Fish, sale of, Newfoundland act of 1905, *B. C. Ap.*, 757, 2214.
 FITZPATRICK: Intercourse with land during shelter, repairs, and securing wood and water, 2213. North Sea fishery regulations, 2215.
 Gear, sale of, Newfoundland act of 1905, *B. C. Ap.*, 757, 2214.
 Harbor and light dues not within renunciation clause of 1818 treaty, 2214.
 Light and harbor dues not within renunciation clause of 1818 treaty, 2214.
 Meaning of question 4, 2212.
 Modus vivendi of 1888 with Canada, *U. S. C. Ap.*, 44, shelter, repairs, wood and water 2213.

Root, Honorable Elihu—Continued.

Question 4—Continued.

Newfoundland act of 1905, *B. C. Ap.*, 757, sale of fish and gear, 2214; 1906, *B. C. Ap.*, 758, suspension of, 2215.

Newfoundland statutes, questions not argued by United States, 2215-16.

North Sea fishery regulations: 2215; FITZPATRICK, 2215.

Regulations, North Sea fishery: 2215; FITZPATRICK, 2215.

Shelter, repairs, wood, and water, FITZPATRICK, 2213.

Statutes cited: Modus vivendi of 1888 with Canada, *U. S. C. Ap.*, 44, 2213. *Newfoundland*: act of 1905, *B. C. Ap.*, 757, 2214; act of 1906, *B. C. Ap.*, 758, 2215.

Treaty right impaired by act of 1905, 2214.

Question 5, pp. 2139-2193. (Aug. 11, 1910.)

Aberdeen to Everett, Mar. 10, 1845, *U. S. C. Ap.*, 488, relaxation of position *re* Bay of Fundy, 2144.

Adams, Gallatin and Rush to, Oct. 20, 1818, *U. S. C. Ap.*, 307, shore and coast, 2177.

Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 66, Jaseur incident, 2179-80.

Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 265, Jaseur incident, 2178.

American, Franco-, dispute, 1821-3, 2185-6.

"Any" in renunciatory clause, treaty of 1818, LAMMASCH, 2182-4.

Argus, The, 2141, 2162, 2176.

Auckland's, Holland and, report, Nov. 14, 1806, *B. C. Ap.*, 61: Maritime jurisdiction, 2152, 2155, 2158, 2164; LAMMASCH, 2152.

Baker, Bathurst to, Sept. 7, 1815, *B. C. Ap.*, 64: Bays, FITZPATRICK, 2193; maritime jurisdiction, 2171-4.

Bannerman, Newcastle to, Aug. 3, 1863, *U. S. C. Ap.*, 1083, maritime jurisdiction, 2163.

Bathurst, Adams to, Sept. 25, 1815, *B. C. Ap.*, 66, Jaseur incident, 2179-80.

Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64: Bays, FITZPATRICK, 2193; maritime jurisdiction, 2172-2174.

Bays: Aberdeen to Everett, Mar. 10, 1845, *U. S. C. Ap.*, 488, 2144. British contention same as United States, 2140-1. British position that "bays" used geographically in 1818 treaty, *B. C. 83, 103, 104, B. C. C. 43, B. A. 92, 1068-9*. Cape Cod Bay, 2177. Chaleur Bay, 2151, 2153, 2160, 2167, 2188. Chesapeake Bay, FITZPATRICK, 2157. Coasts and, FITZPATRICK, 2176. Conception Bay, 2151. Contention of British as to meaning of, 2140. Contention of United States as to meaning of, 2140; creeks and harbors, LAMMASCH, 2174. Delaware Bay, 2151, 2167, FITZPATRICK, 2157. Egmont Bay, GRAY, 2177. FITZPATRICK, 2154, 2158-9. Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.* 64, 2193. Foreign office memorandum, *U. S. C. Ap.*, 629, 2143-4. Fortune Bay, 2153, 2160. Fundy Bay, 2151, 2153, 2144, 2160. Great Britain's position up to 1818, 2153. Harbors, rivers, creeks, and inlets, 2172. In other treaties, 2187. In renunciatory clause of 1818, 2174. Included in coasts, resolution American Congress, *B. C. C. Ap.*, 13, 2186, LAMMASCH, 2186. Jurisdiction not asserted over, 2153. Kimberley to Lisgar, Feb. 16, 1871, *U. S. C. Ap.*, 636, 2143. Less than 6 miles wide, FITZPATRICK, 2181. Madison to Monroe and Pinkney, May 17, 1806, *B. C. Ap.*, 60, 2154. Maritime jurisdiction must be asserted, 2150. Massachusetts Bay, 2177. Memorandum on, Kimberley to Young, Oct. 10, 1870, *U. S. C. Ap.*, 629, 2143-4. Miramichi Bay, 2151, 2153, 2160, 2167, 2188. Notre Dame Bay, 2153. Placentia Bay, 2151, 2153, 2160. St. Georges Bay, 2153, 2186. Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145-6, 2141. Territoriality, Ewart's statement, GRAY, 2147. White Bay, 2151, 2153.

Root, Honorable Elihu—Continued.

Question 5—Continued.

- British contention as to meaning of bays same as United States, 2140-1.
 British position, maritime jurisdiction in 1806, 2150.
 British position, meaning of bays, 2140.
 British position that "bays" used geographically in 1818 treaty, *B. C. 83, 103, 104, B. C. C. 43, B. A. 92.*, 1068-9.
 Buoys, regulations, 1810, *B. C. Ap.*, 603, Miramichi, 2189.
 Canada, territorial waters, 2161.
 Canada, statutes of. *See* Statutes cited.
 Cape Cod Bay, 2177.
 Cases cited: Moray Firth, 3-mile limit, 2166, 2168; *Queen v. Keyn, L. R. (1876), 2 Ex. Div. 63*, abandonment of King's Chambers, 2164; *Twee Gebroeders*, 3-mile limit, 2149, 2151.
 Chaleur, Bay of, 2151, 2153, 2160, 2167, 2188.
 "Chambers between headlands," 2176, FITZPATRICK, 2154.
 Chesapeake Bay, FITZPATRICK, 2157.
 Chitty: Maritime jurisdiction, 2152, 2162.
 "Coast" and "shore" convertible, 2177-8.
 "Coast" and "shore," Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 307, 2177.
 Coast, nature of, as bearing on maritime jurisdiction, LAMMASCH, 2158.
 Coasts, FITZPATRICK, 2158-9.
 Coasts and bays, FITZPATRICK, 2176.
 "Coasts:" history of use of word in treaty of 1818, 2183; in British proposals of Nov. 25, 1782, *B. C. C. Ap.*, 96, 2183-4; includes "bays," LAMMASCH, 2186; resolution of American Congress, *B. C. C. Ap.*, 13, 2186.
 Conception Bay, 2151.
 Controversy limited to territorial waters, 2145-6.
 Crampton-Fillmore conversation, July 20, 1852, *B. C. Ap.*, 154, Webster circular, 2192.
 Crampton, Malmesbury to, Aug. 10, 1852, *U. S. C. Ap.*, 518, arrangement of 1844 regarding Bay of Fundy, 2185.
 Delaware Bay, 2151, 2167, FITZPATRICK, 2157.
 Egmont Bay, GRAY, 2177.
 European political situation in 1806, 2159-60.
 Everett, Aberdeen to, Mar. 10, 1845, *U. S. C. Ap.*, 438, relaxation of position *re* Bay of Fundy, 2144.
 Ewart's argument on maritime jurisdiction and bays, 2147.
 Ewart's statement on territoriality of bays, Gray, 2147.
 Falkland, Stanley to, May 19, 1845, *B. C. Ap.*, 145-6, bays, 2141.
 Falkland to Russell, May 8, 1841, *B. C. Ap.*, 127, Nova Scotia's claim to jurisdiction, 2162.
 Fillmore-Crampton conversation, July 20, 1852, *B. C. Ap.*, 154, Webster circular, 2192.
 Fishermen, line of jurisdiction should be intelligible to, 2182.
 Fitzmaurice, Feb. 21, 1907, territorial waters defined, 2166-7.
 FITZPATRICK: Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, bays, 2193.
 Bays, 2154. Bays less than 6 miles wide, 2181. Coasts and bays, 2176.
 Coasts, bays, and harbors, 2158-9. Delaware and Chesapeake Bays, 2157.
 King's Chambers, 2160.
 Foreign office memorandum on bays, *U. S. C. Ap.*, 629, 2143-4.
 Fortune Bay, 2153, 2160.
 Foster's report (minister of marine and fisheries of Canada), *U. S. C. Ap.*, 312, maritime jurisdiction, 2163.

Root, Honorable Elihu—Continued.

Question 5—Continued.

France, treaties of. *See* Treaties cited.

Franco-American dispute, 1821-3, 2185-6.

Fundy, Bay of: 2151, 2153, 2160. British position in 1844, 2185. Relaxation of position regarding bays in, 2144. Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145-6, 2141.

Gallatin and Rush to Adams, Oct. 20, 1818, shore and coast, *U. S. C. Ap.*, 307, 2177.

GRAY: Egmont Bay, 2177. Ewart's statement on territoriality of bays, 2147.

Great Britain-France, treaty of 1839, 2161.

Great Britain never exercised jurisdiction in disputed bays, 2170-1.

Great Britain not asserting territorial waters, 2161.

Great Britain's position up to 1818, 2153.

Great Britain, statutes of. *See* Statutes cited, *Imperial*.

Great Britain, treaties of. *See* Treaties cited.

Gurry, regulations, 1799, *B. C. Ap.*, 597, Miramichi, 2189.

Harbors, Fitzpatrick, 2158-9.

Headlands, American position in 1818, American proposal, Sept. 17, 1818, *Am. St. Papers*, 4 *For. Rel.*, 337, 2169.

Holland and Auckland's report, Nov. 14, 1806, *B. C. Ap.*, 61: maritime jurisdiction, 2152, 2155, 2158, 2164; Lammasch, 2152.

Institute of International Law, 6 miles jurisdiction, 2150.

International law writers cited: Chitty, maritime jurisdiction, 2152, 2162.

De Martens, maritime jurisdiction, 2152.

Interpretation of treaties, renunciatory clause, treaty of 1818, 2145, 2174.

Jaseur incident: 2171-2. Adams to Bathurst, Sept. 25, 1815, *B. C. Ap.*, 66, 2179-80. Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 265, 2178.

Jurisdiction not asserted over bays, 2153.

Jurisdiction over disputed bays, Great Britain never exercised, 2170-1.

Jurisdictional line should be intelligible to fishermen, 2182.

Keyn, *Queen v.*, *L. R.* (1876), 2 *Ex. Div.*, 63, abandonment of claim to King's Chambers, 2164.

Kimberley to Lisgar, Feb. 16, 1871, *U. S. C. Ap.*, 636: bays, 2143; maritime jurisdiction, 2173.

Kimberley to Young, Oct. 10, 1870, memorandum on bays, *U. S. C. Ap.*, 629, 2143-4.

King's Chambers: 2176. LAMMASCH, 2176. FITZPATRICK, 2160. Abandonment of claim to: LAMMASCH, 2164; Queen *v.* Keyn, *L. R.* (1876), 2 *Ex. Div.*, 63, 2164; Robson, 2164.

LAMMASCH: Abandonment of claims to King's Chambers, 2164. "Any" in renunciatory clause, treaty of 1818, 2182-3. "Bays, creeks, and harbors," 2174. "Coasts" includes "bays," 2186. Effect of circumstances on British position in 1806, 2156. Extent of controversy, 2146. King's Chambers, 2176. Nature of coast as affecting maritime jurisdiction, treaty of 1806, 2158. Places without marine league, 2173. Report of negotiators of 1806, 2152. Statutory limit of jurisdiction, 2162-4.

Lansdowne, Nov. 11, 1907, British position as to territorial waters, 2168.

Lisgar, Kimberley to, Feb. 16, 1871, *U. S. C. Ap.*, 636: bays, 2143; maritime jurisdiction, 2173.

Madison to Monroe and Pinckney, May 17, 1806, *B. C. Ap.*, 60, bays, 2154. Malmesbury to Crampton, Aug. 10, 1852, *U. S. C. Ap.*, 513, arrangement of 1844 *re* Bay of Fundy, 2185.

Root, Honorable Elihu—Continued.

Question 5—Continued.

- Maritime jurisdiction: Abandonment of claims to King's Chambers, 2164. American position in 1818, American proposal, Sept. 17, 1818, *Am. St. Pap.*, 4 *For Rel.*, 337, 2169. Bathurst to Baker, Sept. 7, 1815, 2171-4. Controversy limited to matters within, 2145-6. Ewart's argument, 2147. Fixed by statute, Lammasch, 2162-4. Fitzmaurice, Feb. 21, 1907, 2166-7. Foster's report (Canadian minister of marine and fisheries), *U. S. C. Ap.*, 812, 2163. Holland and Auckland's report, Nov. 14, 1806, *B. C. Ap.*, 61, 2152, 2155, 2158, 2164. Institute of International Law, 6-mile limit, 2150. Kimberley to Lisgar, Feb. 16, 1871, *U. S. C. Ap.*, 636, 2173. LAMMASCH: effect of nature of coast, 2158; abandonment of claims to King's Chambers, 2164; effect of circumstances on British position, 1806, 2156; limit of, 2146; limit fixed by statute, 2162-4; places without marine league, 2173. Lansdowne, Nov. 11, 1907, 2168. de Martens, 2152. Monroe and Pinckney's report, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, 2155. Must be asserted, 2150; Chitty, 2152, 2162; Robson, 2151. Newcastle to Bannerman, Aug. 3, 1863, *U. S. C. Ap.*, 1083, 2163. Newfoundland claims, Falkland to Russell, May 8, 1841, *B. C. Ap.*, 127, 2162. Norway claims 4 miles, 2150. Nova Scotia act of 1836, 2163. Pinckney-Monroe report, Jan. 3, 1807, *U. S. C. C. Ap.*, 96, 2156. Positions of Great Britain and United States in 1806, 2150. Queen v. Keyn, *L. R. (1876)*, 2 *Ex. Div.*, 63, abandonment of claims to King's Chambers, 2164. Reference by negotiators of 1818, 2147.
- De Martens, maritime jurisdiction, 2152.
- Massachusetts Bay, 2177.
- Miramichi Bay, 2151, 2153, 2160, 2167, 2188, 2189.
- Mitchell's map not used in 1818, 2148.
- Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 265, Jaseur incident, 2178.
- Monroe and Pinckney, Madison to, May 17, 1806, *B. C. Ap.*, 60, bays, 2154.
- Monroe and Pinckney reports, Nov. 11, 1806, Jan. 3, 1807, *U. S. C. C. Ap.*, 95, 96, maritime jurisdiction, 2155, 2156.
- Moray Firth case, 3-mile limit, 2166, 2168.
- Negotiators in 1818 referred to maritime jurisdiction, 2147.
- Newfoundland, statutes of. See Statutes cited.
- Newcastle-Bannerman, Aug. 3, 1863, *U. S. C. Ap.*, 1083, maritime jurisdiction, 2163.
- North Sea coasts, 2159.
- North Sea convention, 1882, 3-mile limit, 2161.
- Notre Dame Bay, 2153.
- Norway claims 4 miles jurisdiction, 2150.
- Nova Scotia, act of 1836, maritime jurisdiction, 2163; asserting territorial waters, 2161-2. See also Statutes cited.
- Opinion of law officers of the Crown, 2142.
- Pinckney and Monroe, Madison to, bays, May 17, 1806, *B. C. Ap.*, 60, 2154.
- Pinckney and Monroe reports, Jan. 3, 1807, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, 96, maritime jurisdiction, 2155, 2156.
- Placentia Bay, 2151, 2153, 2160.
- Queen v. Keyn, *L. R. (1876)*, 2 *Ex. Div.*, 63, abandonment of claims to King's Chambers, 2164.
- Regulations, shore, statutes, Chaleur and Miramichi Bays, 2188-9.
- Renunciatory clause in treaty of 1818: 2145; 2174; 2189-90; British proposal, a grant, 2190; "any" in, LAMMASCH, 2182-4; Robson's view, 2189.
- Robson: abandonment of claims to King's Chambers, 2164; jurisdiction must be asserted, 2151; renunciatory clause, 2189.

Root, Honorable Elihu—Continued.

Question 5—Continued.

Rush, Gallatin and, to Adams, Oct. 20, 1818, "shore and coast" *U. S. C. Ap.*, 307, 2177.

Russell, Falkland to, May 8, 1841, *B. C. Ap.*, 127, Nova Scotia's claim to jurisdiction, 2162.

St. Georges Bay, 2153, 2186.

"Shore" and "coast" convertible: 2177-8; Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 307, 2177.

Six-mile limit, Institute of International Law, 2150.

Stanley to Falkland, May 19, 1845, bays, *B. C. Ap.*, 145-6, 2141.

Stowell, Lord, "Twee Gebroeders" case, 2149, 2151.

Statutes asserting jurisdiction over Chaleurs and Miramichi Bays; shore regulations, 2188-9.

Statutes cited: *Canada*: 1788, *B. C. Ap.*, 592, 2188; *Imperial*: 1785, *B. C. Ap.*, 554, Chaleurs Bay, 2188; 1851, Boundary between Old Canada and New Brunswick, *B. C. Ap.*, 572, 2188, 2189. *New Brunswick*, statutes re Miramichi Bay: 1799, shore regulations; casting of gurry, *B. C. Ap.*, 597, 2189; 1810, placing buoys, *B. C. Ap.*, 603, 2189. *Nova Scotia*: 1836, maritime jurisdiction, 2163.

Ten-mile bay, France-Great Britain, Treaty of 1839, 2161.

Territorial waters: Canada, Nova Scotia and Great Britain, 2161; Fitzmaurice, Feb. 21, 1907, 2166-7; Lansdowne, Nov. 11, 1907, 2168; subject matter of controversy limited to, 2145-6.

Three-mile limit, places without, LAMMASCH, 2173. *See also* Cases cited.

Treaties cited: 1806 (unratified) *U. S. C. C. Ap.*, 22, 2154-59; European history prior thereto, 2159-60; LAMMASCH, 2158. 1818, renunciatory clause, 2145, 2174, 2189-90. 1839, Great Britain-France, 10-mile bay, 2161. 1882, North Sea convention, 3-mile limit, 2161.

"Twee Gebroeders" case, 3-mile limit, 2149, 2151.

United States contention as to meaning of bays, 2140.

United States position, headlands, 1818, *Am. St. Pap. & For. Rel.*, 337, 2169.

United States position, maritime jurisdiction, 2150.

United States, treaties of. *See* Treaties cited.

"Washington," The, 2141, 2162, 2176.

Webster circular, *B. C. Ap.*, 152, 2190-93.

White Bay, 2151, 2153.

Young, Kimberley to, Oct. 10, 1870, *U. S. C. Ap.*, 629, bays, 2143-4.

Question 6, pp. 2219-2224. (Aug. 12, 1910.)

"Coasts," historical use thereof reviewed, 2219.

Hague convention, 1907, introduction of documents, 2223.

Halifax Commission, proceedings introduced by Root, 2219-20; objection thereto by Robson, 2220.

Robson, objection to introduction of Halifax Commission proceedings, 2220.

Question 7, pp. 2224-2230. (Aug. 12, 1910.)

Bait, purchase of, by trading vessel, GRAY, 2227.

Basis of decision of question 7, 2229-30.

DRAGO: trading and fishing, 2230.

Durand, Root to, Oct. 19, 1905, *U. S. C. Ap.*, 966, right to trade, licensed and registered vessels, 2225-6.

Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, right to trade, licensed and registered vessels, 2226.

Elgin, MacGregor to, Sept. 1, 14, 1907, *U. S. C. Ap.*, 1013, 1014, right to trade, 2224.

Root, Honorable Elihu—Continued.

Question 7—Continued.

Elgin to MacGregor, Sept. 2, 1907, *U. S. C. Ap.*, 1014, right to trade, 2225.

FITZPATRICK: trading and fishing, 2230.

GRAY: Purchase of bait by trading vessel, 2227.

Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 971, right to trade, 2226.

"Hovering," 2227.

LAMMASCH: Trading and fishing, 2229.

Licensed and registered vessels, Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, 2226; Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 2225-6.

MacGregor, Elgin to, Sept. 2, 1907, *U. S. C. Ap.*, 1014, right to trade, 2225.

MacGregor to Elgin, Sept. 1, 14, 1907, *U. S. C. Ap.*, 1013, 1014, right to trade, 2224.

Newfoundland proposed question 7, 2224.

Purchase of bait by trading vessel, GRAY, 2227.

Question 7 framed by both parties, 2224.

Reid, Grey to, Feb. 2, 1906, *U. S. C. Ap.*, 971, right to trade, 2226.

Registered and licensed vessels: Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, 2226; Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 2225-6.

Root, Durand to, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, right to trade, licensed and registered vessels, 2226.

Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, right to trade, licensed and registered vessels, 2225-6.

Trade, right to: Elgin to MacGregor, Sept. 2, 1907, *U. S. C. Ap.*, 1014, 2225;

Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 971, 2226; MacGregor to Elgin, Sept. 1, 14, 1907, *U. S. C. Ap.*, 1013, 1014, 2224; Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 966, 2225-6; Durand to Root, Oct. 22, 1905, *U. S. C. C. Ap.*, 633, 2226.

Trading and fishing, FITZPATRICK, DRAGO, 2230; LAMMASCH, 2229.

Trading vessel, purchase of bait by, GRAY, 2227.

Turner, Honorable George.

Introduction, pp. 471-479. (June 20, 1910.)

Bays, British doctrine of, never practically applied by Great Britain, 478-9.

Bays, question introduced, 478-9.

British and United States contentions compared, 476-8.

British doctrine of bays never practically applied by Great Britain, 478-9.

Colonial pressure forced Great Britain, 473.

Contentions of United States and Great Britain compared, 476-478.

Controversy long-standing, LAMMASCH's opening speech, 472, 495.

Diplomatic function does not attach to this court, 474.

Impartial legal decision expected by United States, 474.

International law questions of case must be decided, 475.

LAMMASCH: Controversy is long-standing, 472, 495.

Legal questions must be dealt with, 474.

Question 5 introduced, 478-9.

Res adjudicata, 474.

Stare decisis, 474.

Treaty rights undisputed for quarter of century, 473.

United States and British contentions compared, 476-8.

Historical résumé, pp. 479-540. (June 20, 22, 1910.)

Accretion increases praedium dominans, GRAY, 503; FITZPATRICK, 504.

Adams: p. 184; nature of fishery rights and liberties, 513-14; banks most valuable, 514; fishery is "one," 514.

Turner, Honorable George—Continued.

Historical résumé—Continued.

- Adams's diary, *U. S. C. Ap.*, 223, "right," "liberty," final form of 1783 treaty article, 490.
- Adams's opinion, treaty of 1783, 484-87.
- Adams's reference to codfish, FITZPATRICK, 514.
- Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 272, view of American negotiators, treaty of 1818, 524.
- Adams to Rush, Apr. 5, 1815, *U. S. C. C. Ap.*, 617, negotiations 1782, 485.
- Adams to Thomas, Aug. 1, 1822, *U. S. C. Ap.*, 317, negotiations 1782, 486.
- American negotiators, view of, treaty of 1818, Adams to Bathurst, *U. S. C. Ap.*, 272, Sept. 25, 1815, 524.
- Anglo-American Telegraph Co., Direct United States Cable Co. v., Conception Bay, 540.
- Auckland's speech, effect of war on treaties, *Parliamentary History of Great Britain*, xxxvi: 704, 505.
- Bait, entrance for under 1818 treaty, GRAY, 526.
- Bait, treaty of 1818, 532-3.
- Bank fishery most valuable, Adams: p. 184, 513-14.
- Bathurst, Adams to, Sept. 25, 1815, *U. S. C. Ap.*, 272, view of American negotiators, treaty of 1818, 524.
- "Bays," treaty of 1783 meant narrow, LAMMASCH, 512.
- Bays, treaty of 1818, 538-540.
- "Bays" as defined by United States, 511-513.
- British concession, negotiations 1818, Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 529.
- Burke's speech on conciliation, fisheries, 515-16.
- Bynkershoek's rule of jurisdiction based on defensibility, 509, 540.
- Calvo: *D. II*, 214, 215, effect of war on treaties, 501.
- Carnarvon: Effect of war on treaties, *Parliamentary History of Great Britain*, xxxvi: 715, 506.
- Cases cited: Direct United States Cable Co. v. Anglo-American Telegraph Co., Conception Bay, 540; Queen v. Keyn, 3-mile limit, *L. R. (1876)*, 2 *Ex. Div.*, 63, 510.
- Castlereagh, Robinson to, Oct. 10, 1818, *B. C. Ap.*, 92, negotiations 1818, British concessions, 529.
- Changes in phraseology, treaty of 1818, 525.
- Clauss, p. 213, effect of war on treaties, 499-500.
- Coast, description of, in treaty of 1818, summary of provisions, 531.
- "Coasts," negotiations, 1818, 537-8.
- Coasts limited, negotiations, 1818, 528.
- Codfish, Adams's reference to, FITZPATRICK, 514.
- Conception Bay, Direct United States Cable Co. v. Anglo-American Telegraph Co., 540.
- Congressional committee report, Jan. 8, 1782, *B. C. C. Ap.*, 28, re open sea, LAMMASCH, 484, 508, 523.
- Continental Congress, Secret Journals of, treaty of 1783, 481.
- Contract analogy applied to abrogated treaties, GRAY, 497.
- Counter-memorandum to first project, not filed, treaty 1818, 527.
- Counter-project, British, treaty of 1818, 527.
- "Cure" and "dry," negotiations 1818, 537.
- Defensibility, Bynkershoek's theory of jurisdiction, based on, 509, 540.
- Direct United States Cable Co. v. Anglo-American Telegraph Co., Conception Bay, 540.

Turner, Honorable George—Continued.

Historical résumé—Continued.

- "Dry" and "cure," negotiations 1818, 537.
- Fabre, *p. 33*, effect of war on treaties, 501.
- Ferguson, *2:63, 64*, effect of war on treaties, 502.
- First project, treaty of 1818, 525.
- Fisheries; Burke's speech on conciliation, 515-16.
- Fisheries, History of North-Atlantic, prior to 1783, 520-522.
- Fishery described, Newfoundland, 513-516, 518-19.
- Fishery is "one." Adams: *p. 184*, 513-14.
- FITZPATRICK: Accretion to prædium dominans, 504. Adams's reference to codfish, 514. Jurisdiction, 510.
- Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, "right," 487.
- "Forever," treaty of 1818, 533-35.
- "Franchise," liberty means, 491.
- French treaty rights, 507.
- GRAY: Contract analogy applied to abrogated treaties, 497. Entrance for bait under 1818 treaty, 526. Prædium dominans, 503, 588.
- Great Britain, condition of, 1783, Shelburne to Parliament, Jan. 27, 1783, *B. C. C. Ap.*, 123, 482-3.
- Great Britain, policy of, Knox's report, 518-19.
- Great Britain, repressive policy of, 516.
- Great Britain, repressive policy of, M'Gregor, *U. S. C. Ap.*, 572, 577, 517-18.
- Hawkesbury: Effect of war on treaties, *Parliamentary History of Great Britain*, *xxxvi*: 763, 507.
- History of North Atlantic fisheries prior to 1783, 520-522.
- Holtzendorff, effect of war on treaties, 501.
- "In common," negotiations, 1818, 535-7.
- Independence insisted upon in negotiations for treaty of 1783, 480.
- International law writers cited: Calvo, *D. II*: 214, 215, effect of war on treaties, 501. Clauss, 213, effect of war on treaties, 499-500. Fabre, 33, effect of war on treaties, 501. Ferguson, 2:63, 64, effect of war on treaties, 502. Holtzendorff, effect of war on treaties, 501. Olivart, effect of war on treaties, 501. Westlake, *I*: 60-62, effect of war on treaties, 498. Wheaton, *sec. 268*, effect of war on treaties, 498.
- Journals, Secret, of Continental Congress, treaty of 1783, 481.
- Jurisdiction, FITZPATRICK, 510.
- Jurisdiction based on defensibility, Bynkershoek's rule, 509, 540.
- Keyn, Queen *v.*, 3-mile limit, *L. R. (1876)*, 2 *Ex. Div.*, 63, 510.
- Knox's report, policy of Great Britain, 518-19.
- LAMMASCH: British opposition to renunciatory clause, 534. Congressional committee report, Jan. 8, 1782, *re* open sea, *B. C. C. Ap.*, 28, 484, 508, 523. Treaty of 1783 meant narrow bays, 512. What is prædium dominans, 502, 588.
- Liberties and rights, fishery, Adams, *p. 184*, 513-14.
- "Liberty," Adams's diary, *U. S. C. Ap.*, 223, 490.
- "Liberty" and "right," 487.
- "Liberty" and "right" synonymous to certain extent, 491.
- "Liberty" means "franchise," 491.
- Maps, Mitchell's, purpose of, in 1782, 511.
- M'Gregor, *U. S. C. C. Ap.*, 572, 577 repressive policy of Great Britain, 517-18.
- Memorandum explaining first project, treaty of 1818, 526.
- Mitchell's maps, purpose of, in 1782, 511.

Turner, Honorable George—Continued.*Historical résumé—Continued.*

- Negotiations, 1782: 483-91. Adams to Rush, Apr. 5, 1815, *U. S. C. C. Ap.*, 617, 485. Adams to Thomas, Aug. 1, 1822, *U. S. C. C. Ap.*, 317, 486. Independence insisted upon, 480.
- Newfoundland fishery described, 513-516, 518-19.
- Newfoundland, M'Gregor, *U. S. C. C. Ap.*, 572, 577 repressive policy of Great Britain, 517-18.
- No question under treaty of 1783, 523-524.
- Olivart, effect of war on treaties, 501.
- Open sea, congressional committee report re, Jan. 8, 1782, *B. C. C. Ap.*, 28, LAMMASCH, 484, 508, 523.
- Parliament, Shelburne to, Jan. 27, 1783, *B. C. C. Ap.*, 123, condition of Great Britain, 1783, 482-3.
- Partition of empire theory, 492.
- Partition of sovereignty, treaty of 1783, 480.
- Policy of Great Britain, Knox's report, 518-19.
- Policy of Great Britain repressive: 516; M'Gregor, *U. S. C. C. Ap.*, 572, 577, 517-18.
- Praedium dominans: GRAY, 503, 588; LAMMASCH, 502, 588.
- Praedium dominans increased by accretion: FITZPATRICK, 504; GRAY, 503.
- Provisional articles, treaty of 1783, 488-490.
- Queen v. Keyn, *L. R. (1876) 2 Ex. Div.*, 63, 3-mile limit, 510.
- Question 5, 509-513.
- Real right not ended by war, 496.
- Reciprocal rights in provisional article, treaty of 1783, 491.
- Renunciatory clause, treaty of 1818: 532; 538-40; British opposition to, LAMMASCH, 534.
- "Right:" Adams's diary, *U. S. C. C. Ap.*, 223, 490; Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, 487.
- "Right" and "liberty:" 487; synonymous to certain extent, 491; in fishery, Adams, p. 184, 513-14.
- Robinson to Castlereagh, Oct. 18, 1818, *B. C. C. Ap.*, 92, British concessions, negotiations 1818, 529.
- Rush, Adams to, Apr. 5, 1815, *U. S. C. C. Ap.*, 617, negotiations 1782, 485.
- Shelburne, Fitzherbert to, Dec. 4, 1782, *B. C. C. Ap.*, 110, "right," 487.
- Shelburne to Parliament, Jan. 27, 1783, *B. C. C. Ap.*, 123, condition of Great Britain, 1783, 482-3.
- Shelter, treaty of 1818, 532-3.
- Sovereignty, partition of, treaty of 1783, 480.
- Tenure, words of, negotiations of 1818, 531.
- Thomas, Adams to, Aug. 11, 1822, *U. S. C. C. Ap.*, 317, negotiations, 1782, 486.
- Three-mile limit, Queen v. Keyn, *L. R. (1876), 2 Ex. Div.*, 63, 510.
- Trade limitation, negotiations 1818, 528.
- Treaties cited. See below, Treaty of 1783, Treaty of 1814, Treaty of 1818.
- Treaties, effect of war on, 493-506. See War, effect of, on treaties, under Treaty of 1783.
- Treaty of 1783: Adams's diary, *U. S. C. C. Ap.*, 223, "right," "liberty," final form of treaty article, 490. Adams's opinion, 484-87. Adams to Rush, Apr. 5, 1815, *U. S. C. C. Ap.*, 617, negotiations 1782, 485. Adams to Thomas, Aug. 1, 1822, *U. S. C. C. Ap.*, 317, negotiations 1782, 486. Bays, narrow, LAMMASCH, 512. Congressional committee report, Jan. 8, 1782, *B. C. C. Ap.*, 28, re open sea, LAMMASCH, 484, 508, 523. Continental Congress, Secret Journals of, 481. Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, "right," 487.

Turner, Honorable George—Continued.

Historical Résumé—Continued.

Great Britain, condition of, 1783, Shelburne to Parliament, Jan. 27, 1783, *B. C. C. Ap.*, 123, 482-3. Independence insisted upon, 480. "Liberty," Adams's diary, *U. S. C. Ap.*, 223, 490. "Liberty" and "right," 487. "Liberty" and "right" synonymous to certain extent, 491. "Liberty" means "franchise," 491. Negotiations, 1782, 483-491. No question arose under, 523-524. Partition of empire theory, 492. Provisional articles, 488-90. Reciprocal rights in provisional article, 491. "Right," Adams's diary, *U. S. C. Ap.*, 223, 490. "Right," Fitzherbert to Shelburne, Dec. 4, 1782, *B. C. C. Ap.*, 110, 487. Shelburne to Parliament, Jan. 27, 1783, *B. C. C. Ap.*, 123, condition of Great Britain, 1783, 482-3. War, effect of, on treaties, 493-506: Auckland's speech, *Parliamentary History of Great Britain*, xxxvi: 704, 505; British argument not based on record, 494; Calvo, *D. II*, 214, 215, 501; Carnarvon, *Parliamentary History of Great Britain*, xxxvi: 715, 506; Clausa, p. 213, 499-500; contracts, analogy of executed and executory, GRAY, 497; Fabre, p. 33, 501; Ferguson, 2:63, 64, 502; French treaty rights, 507; Hawkesbury, *Parliamentary History of Great Britain*, xxxvi: 763, 507; Holtzendorff, 501; Olivart, 501; Real right not ended by war, 496. Westlake, *I:60-62*, 498. Wheaton, *sec. 268*, 498.

Treaty of 1814, position of negotiators, 524.

Treaty of 1818: Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 272, view of American negotiators, 524. Anglo-American Telegraph Co., Direct United States Cable Co. v., Conception Bay, 540. Bait, 532-3. Bait, entrance for, GRAY, 526. Bays, 538-540. Bynkershoek's theory of defensibility, 540. Negotiations: American negotiators to British negotiators, note, trade limitations, limited coasts, 528; bait, summary of provisions, 532-3; British concessions, Robinson to Castlereagh, Oct. 10, 1818, *B. C. C. Ap.*, 92, 529; changes in phraseology, 526; "coasts," 537-538; coast, description of, summary of provisions, 531; counter-project, 527; "cure" and "dry," 537; explanatory memorandum to first project, 526; failure to file counter-memorandum, 527; first project, 525; "forever," 533-35; "in common," 535-537; LAMMASCH, British opposition to renunciatory clause, 534; limited coasts, 528; renunciatory clause, 532; Robinson to Castlereagh, Oct. 10, 1818, *B. C. C. Ap.*, 92, British concessions, 529; shelter, summary of provisions, 532-3; trade limitations, 528; water, summary of provisions, 532-3; wood, summary of provisions, 532-3; words of tenure, summary of provisions, 531. Renunciatory clause, 538-540.

War, effect of on treaties, 493-506.

See same title under Treaty of 1783.

Water, treaty of 1818, 532-3.

Westlake, *I: 60-62*, effect of war on treaties, 498.

Wheaton, *sec. 268*, effect of war on treaties, 498.

Wood, treaty of 1818, 532-3.

Words of tenure, negotiations of 1818, 531.

Question 1, pp. 540-867. (June 22, 23, 24, 27, 28, 30, July 1, 1910.)

Act of sovereignty defined, 697-8.

Acts of internal administration of governments not binding here, 787.

Adams, Bathurst to, Oct. 30, 1815, *U. S. C. Ap.*, 277, "in common," 738.

Adams' diary, "liberty" as used by negotiators, 1782, 707.

Adams, Gallatin to, Nov. 6, 1818, *B. C. C. Ap.*, 97, servitude, "for ever" 580, 863-4.

Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 279: "In common," 722;

"liberty" and "right," 708-9.

Turner, Honorable George—Continued.

Question 1—Continued.

Administrative acts construing 1818 treaty, 787.

Administrative acts of internal character not binding on governments here, 787.

Admiralty, Lords of, Cardwell to, April 12, 1866, *B. C. Ap.*, 221: "In common," 710; subjection to regulations, 812.

Aliens, right to employ, 769, 770.

American and French rights same, 683, 853.

American fishermen, competition of British with, cannot be more extended than with French, 858.

American position on British fishermen in American waters, treaty of 1871, 716.

American and French rights of regulation similar, 863.

American right, Clauss, *p. 87*, GRAY, 633.

American right is servitude, FITZPATRICK, 629.

American to British plenipotentiaries, Oct. 7, 1818, *U. S. C. Ap.*, 314, renewal of 1783 right, 740.

American writers follow continental on servitudes, 679.

Analogy between international and civil law servitudes, 502-505, 587-592.

Appeal of United States against unreasonable regulations, 554-556.

Archibald and Strachey to Perrier, June 4, 1853, *U. S. C. C. Ap.*, 234, French right limitation of sovereignty, 859-60.

Artopaeus, servitudes, 576; application of servitude, 692.

Ash's Dictionary: "In common," 717.

Attorney General *v. Sillem*, 2 *H. & C.*, 531, strict construction, 702.

d'Aubigny to Iddesleigh, Sept. 20, 1886, *U. S. C. C. Ap.*, 316, French right, 853.

Austria-Hungary, Bosnia, Herzegovina, servitude relationship, 604.

Authority of text writers (servitudes): Queen *v. Keyn*, *L. R. (1876)*, 2 *Exch. Div.*, 68, 568; Phillimore, 569; Lord Esher, 570; Russell at Fur Seal Arbitration, 13 *Proceedings*, 10, 11, 689-90.

Bagot to Monroe, Dec. 31, 1816, *U. S. C. Ap.*, 293, renewal of 1783 right, 739.

Baird's report, disappearance of herring, 782.

Barclay's Dictionary: "In common," 717.

Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 277, "in common," 738.

Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, explains act of 1819, no restrictions on Americans, 750-1.

Belgium, treaties of. *See* Treaties cited.

Berlin, treaty of, 1878, servitudes, 682.

Blackstone's Commentaries: "In common," 727.

Blaine, Lowell to, Mar. 12, 1881, *U. S. C. Ap.*, 730, joint regulations, 839.

Blaine to Lowell, Mar. 14, 1881, *U. S. C. Ap.*, 731, joint regulations, 839.

Bluntschli, servitudes, *secs. 353-8*, servitudes, 657.

Bond's speeches, *U. S. C. C. Ap.*, 413, 438, 446, 448, policy of Newfoundland legislation, 773, 774, 775.

Bonfils, *secs. 339, 340, 342*, servitudes, 643-5.

Bosnia, Herzegovina, Austria-Hungary, servitude relationship, 604.

Boutwell circulars, 803-812. Duty to observe regulations, GRAY, 808; LAMMASCH, 810. First circular, May 16, 1870, *B. C. Ap.*, 235, 805. Fish to Boutwell, Apr. 23, 1870, *U. S. C. C. Ap.*, 187, 804-5. Reason for, LAMMASCH, 807. Related only to nontreaty coasts, 808, 809. Second circular, June 9, 1870, *B. C. Ap.*, 237, 806.

Turner, Honorable George—Continued.*Question 1—Continued.*

- Boutwell, Fish to, Apr. 23, 1870, *U. S. C. C. Ap.*, 187, Boutwell circular, 804-5.
- Boutwell not representative of United States, 811.
- Bouvier's Law Dictionary: "Liberties," 706.
- Boyle, Lyttleton to, Apr. 19, 1904, *U. S. C. C. Ap.*, 339, French right to summer fishery only, 862.
- Boyle to Lyttleton, Apr. 15, 1904, *U. S. C. C. Ap.*, 338, French right only to summer fishery, 861.
- Bracton, p. 375, "in common," 726.
- British act of 1788, interpretation of notes attached to French-British treaty of 1783, 855.
- British act of June 14, 1819, *U. S. C. Ap.*, 112, legislative construction of treaty of 1818, 788.
- British admission of limitation of sovereignty, 767.
- British admission that Great Britain never attempted regulation of French right, 858.
- British assumptions in Halifax arbitration, 814.
- British attitude before Halifax arbitration, Evarts to Welsh, Aug. 1, 1879, *U. S. C. Ap.*, 671, 832.
- British concession, "liberty" is "right," 708.
- British fishermen have no more rights to compete with Americans than with French, 858.
- British fishermen in American waters; American position, treaty of 1871, 716.
- British memorandum, May 3, 1882, *U. S. C. Ap.*, 742-3, joint regulations, 839-40.
- British objection to French claim, 857.
- British Order in Council, 1819, *U. S. C. Ap.*, 115, construction of 1818 treaty, 747-8.
- British plenipotentiaries, American to, Oct. 7, 1818, *U. S. C. Ap.*, 314, renewal of 1783 right, 740.
- British position inconsistent with view at Halifax arbitration, 825.
- British position *re* servitudes, 1818, 580.
- British position to-day on limitation of sovereignty, 550.
- British sovereignty limited by treaty, 829.
- Bulmerincq, sec. 49, objections to servitude, 687, servitudes, 611.
- Bultow or trawl defined, 785.
- Bultow violates treaty, Sabine's report, *U. S. C. Ap.*, 1153, Lammasch, 786.
- Bultows, 784.
- Cables as economic servitudes, 692.
- Calvo, D., servitudes, 650.
- Canada did not regulate treaty coast until 1868, 757.
- Canada discontinued fishing licenses, 804.
- Canada, first regulations, in 1892, 759.
- Canada-Labrador boundaries, LAMMASCH, 812.
- Canada-Labrador, change of boundary did not affect treaty rights, 810.
- Canada, statutes of. *See* Statutes cited.
- Canadian fisheries, nontreaty coasts, GRAY, 823.
- Canadian foreign fishing vessels act, May 12, 1870, *U. S. C. Ap.*, 136: Thornton to Davis, May 26, 1870, *U. S. C. Ap.*, 589, 805-6.
- Canadian policy, change of, Thornton to Fish, Apr. 14, 1870, *U. S. C. Ap.*, 580, 803.

Turner, Honorable George—Continued.

Question 1—Continued.

- Cardwell circular: 812-813. Communicated to United States four years after date, 812. Objections to, Fish to Thornton, June 8, 1870, *B. C. Ap.*, 286, 812.
- Cardwell to Lords of Admiralty, Apr. 12, 1866, *B. C. Ap.*, 221, "in common," 710; subjection to regulations, 812.
- Cases cited; Attorney General *v. Sillem*, 2 *H. & C.*, 531, strict construction, 702; *Malcolmson v. O'Dea*, 10 *H. L.*, 591, "in common," 729; Queen *v. Keyn*, L. R. (1876) 2 *Ex. Div.*, 63, municipal law and treaty, 802; *Whitney v. Robertson*, 124 *U. S.*, 124, municipal law and treaty, 802.
- Castlereagh, Adams to, Jan. 22, 1816, *U. S. C. Ap.*, 279: "in common," 722; "liberty" and "right," 708-9.
- Castlereagh, Robinson to, Oct. 10, 1818, *B. C. Ap.*, 92, renewal of right of 1783, drying and curing, 741.
- Castlereagh, Robinson and Goulburn to, Sept., 1818, *B. C. Ap.*, 86, right to be unlimited, 740.
- Chrétien, *secs. 259, 260*, servitudes, 646-8.
- Civil and international law servitudes, analogy, 502-505, 587-592.
- Civil law servitude, nature of, LAMMASCH, 590.
- Clarendon on "in common," 549.
- Clarendon, Crampton to: June, 1855, *B. C. Ap.*, 206, Marcy circulars, 795; Apr. 25, 1856, *B. C. Ap.*, 210, Marcy circular, 796.
- Clarendon to Crampton, Oct. 11, 1855, *B. C. Ap.*, 208, "in common," 710.
- Clauss, servitudes, 561, 570-80, 584-588, 612, 622-624, 627-634, 692-694, 695-698; trading rights not servitudes, 764.
- Coke's *Lytleton*, *pp. 268-9*, "in common," 726.
- Commercial treaty not limitation of sovereignty, LAMMASCH, 844.
- "Concurrent rights" used in Halifax arbitration, 815.
- Construction of treaty of 1818: 701-865. Contemporaneous, 744, 788. Imperial statute of June 14, 1819, *U. S. C. Ap.*, 112, making 1818 treaty effective, 744, 788. Order in council, June 19, 1819, *U. S. C. Ap.*, 115, relating to 1819 statute, 747-8.
- Construction, strict: Attorney General *v. Sillem*, 2 *H. & C.*, 531, 702. Lieber, *p. 65*, 703-5. Of treaty right as to servitude, 600. Rule, 701-05. Rule not necessary to determine economic servitude, 611. Sedgwick, *p. 326*, 703. Sutherland, *sec. 347*, 701-2.
- Continental Congress, use of "in common" by, 719-20.
- Continental writers unanimous on servitude theory, 663.
- Cowley to Walewski, Dec. 13, 1858, *U. S. C. C. Ap.*, 257, French right, 851.
- Crampton, Clarendon to, Oct. 11, 1855, *B. C. Ap.*, 208, "in common," 710.
- Crampton to Clarendon, June, 1855, *B. C. Ap.*, 206, Marcy circulars, 795.
- Crampton to Clarendon, Apr. 25, 1856, *B. C. Ap.*, 210, Marcy circular, 796.
- Crane and Dubois, case against, LAMMASCH, 558.
- Creasy, *secs. 256, 257, 261*, servitudes, 665-666.
- Crews, Newfoundlanders in, 769.
- Curing and drying, 552.
- Curing and drying: Halifax arbitration, 817; Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 741; sine qua non in 1818, 741.
- Davies' Dictionary: "In common," 717.
- Davis, Thornton to: May 26, 1870, *U. S. C. Ap.*, 539, Canadian foreign fishing vessels act, May 12, 1870, 805; July 30, 1873, *U. S. C. C. Ap.*, 197, Newfoundland act making 1871 treaty effective, 789-90.

Turner, Honorable George—Continued.

Question 1—Continued.

- Derby to Glover, June 12, 1884, *U. S. C. C. Ap.*, 308, French right a servitude, 583.
- Despagnet, *sec. 190*, servitudes, 645.
- Detention and seizure, 771.
- Destruction of fish, 779, 781, 782.
- Diena, servitudes, 654-56.
- Diplomatic correspondence construing treaty, 787.
- Dispute between Newfoundland and Great Britain during 1906-7, 555.
- Distinction between state and inhabitants immaterial, 700.
- DRAGO:** All treaties limit sovereignty, 845. Force of regulations prior and subsequent to 1871 treaty, 842. Real and personal rights, 845. Regulations violative of treaty, 843. Servitude doctrine in diplomatic correspondence, 580.
- Drying and curing: 552; Halifax arbitration, 817; Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 741; sine qua non in 1818, 741.
- Dubois, Crane and, case against, **LAMMASCH**, 558.
- Durand, Root to, Oct. 19, 1905, *U. S. C. Ap.*, 968, Newfoundland fishery regulations, 771.
- Economic servitude: cable lines, 692; fisheries, 692; must be enjoyed by citizens, 639; passes to successor of dominant nation, 847; railways, 691, 698; rule of strict construction not necessary to determine, 611.
- Elgin to McGregor, Aug. 8, 1906, *U. S. C. Ap.*, 986, existence of regulations, 753, 758.
- Encyclopaedia Britannica, 9th ed. 1879, *U. S. C. C. Ap.*, 535, destruction of fish, 779.
- Engelbrecht, application of servitude, 693.
- Esher, Lord, authority of text writers, 570.
- Exclusive claim of France not sustainable on principle, 857.
- Exclusiveness of French right never acknowledged by Great Britain, 855.
- Evarts' report, May 17, 1880, *B. C. Ap.*, 280: "in common," 732-4; Halifax case, 832.
- Evarts to Welsh: Sept. 28, 1878, *U. S. C. Ap.*, 652, Fortune Bay controversy, 827. Nov. 4, 1878, *U. S. C. C. Ap.*, 201, Fortune Bay controversy, 829, Halifax award, payment, 829. Nov. 9, 12, 16, 1878, *U. S. C. C. Ap.*, 202-3, Halifax award, payment, 830-31. Aug. 1, 1879, *U. S. C. Ap.*, 671-2: "in common," 732-4; Fortune Bay controversy; Halifax arbitration, British attitude before, 832-3.
- Extradition treaty not limit on sovereignty, **LAMMASCH**, 844.
- Fabre, servitudes, 648-9.
- Finlay on limitation of sovereignty, 548.
- Fiore, *T.: Secs. 380, 829, 830, and C.: Secs. 615, 616, 617, 1095, 1096*, servitudes, 652-4.
- First distinct issue between United States and Great Britain regarding regulations, 789.
- Fish objected to regulations in 1873, 551.
- Fish, right to, a servitude in Roman law, **FITZPATRICK**, 591.
- Fish, Thornton to, June 19, 1873, *U. S. C. C. Ap.*, 195, Newfoundland act making effective 1871 treaty, 788.
- Fish, Thornton to:** Apr. 14, 1870, *U. S. C. Ap.*, 580, change of Canadian policy, 803. Apr. 22, 1870, *U. S. C. Ap.*, 581, May 18, 1870, *U. S. C. Ap.*, 588, treaty coasts, 804.
- Fish to Boutwell, Apr. 23, 1870, *U. S. C. C. Ap.*, 187, Boutwell circular, 804-5.

Turner, Honorable George—Continued.

Question 1—Continued.

- Fish to Thornton: Apr. 21, 1870, *U. S. C. Ap.*, 581, treaty coasts, 804. May 31, 1870, *U. S. C.*, 149, limits of treaty coasts, 831. June 8, 1870, *B. C. Ap.*, 236, objections to Cardwell circular, 812. June 25, 1873, *U. S. C. C. Ap.*, 196, Newfoundland act making effective treaty of 1871, 789.
- Fisheries as economic servitudes, 692.
- Fishery right of 1783, renewal of: American to British plenipotentiaries, Oct. 7, 1818, *U. S. C. Ap.*, 314, 740. Bagot to Monroe, Dec. 31, 1816, *U. S. C. Ap.*, 293, 739. Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92, 741.
- Fishing and hunting rights as servitudes, GRAY, 607.
- Fishing, destructive, 779, 781, 782.
- Fishing licenses discontinued by Canada, 804.
- Fishing, limitation on time and manner of, none in treaty of 1871, 790.
- Fishing regulations, 1905, *U. S. C. Ap.*, 201: Sunday fishing, 783; bultows, trawls, 784; purse seines, 778-9, 783.
- Fishing right a special right, LAMMASCH, 766.
- FITZPATRICK: Authority that American right is servitude, 629. Implied abrogation of sovereignty, servitudes, 626. "In common" does not imply exclusive grant, 724-5. Participation of United States in enforcing regulations, 542, 543. Partition theory, 733. Regulations of 1786, *B. C. Ap.*, 555, 754. Right to fish a servitude in Roman law, 591. Servitude, 845. Sovereignty restricted without express words, 547.
- Fleming's Dictionary: "In common," 717.
- "For ever," Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, 864.
- Foreign fishing vessels acts, 1905, 1906, *U. S. C. Ap.*, 197, 555, 769-771.
- Fortune Bay controversy: 826-843. Connection of Halifax award with, 829. Evarts to Welsh, Sept. 28, 1878, *U. S. C. Ap.*, 652, 827, Nov. 4, 8, 9, 12, 16, 1878, *U. S. C. C. Ap.*, 201-203, 827-31, Aug. 1, 1879, *U. S. C. Ap.*, 671-2, 832-3. Granville to Lowell, Oct. 27, 1880, *U. S. C. Ap.*, 713, 836. Salisbury to Hoppin, Apr. 3, 1880, *U. S. C. Ap.*, 685, 834. Salisbury to Welsh, Aug. 23, Nov. 7, 1878, *U. S. C. Ap.*, 650, 658, 827, 828. Settlement of, local laws not discussed, 837.
- Fourth article of special agreement of 1909 affords relief from regulations, 556-557.
- France, treaties of. See Treaties cited.
- "Franchise" and "liberty" synonymous, 705-6.
- Franklin, Jay, Rayneval, conversation, Oct. 24, 1782, *B. C. C. Ap.*, 78, "in common," 721.
- Frelinghuysen's memorandum, May 9, 1882, *U. S. C. Ap.*, 743, joint regulations, 840.
- French and American rights of regulation similar, 863.
- French and American rights same, 683, 853.
- French, competition of British with American fishermen can not be more extended than with, 858.
- French fishery: Imperial act, 1788, *B. C.* *Ap.*, 561, 749; "in common," Perrier to Malmesbury, July 26, 1852, *U. S. C. C. Ap.*, 227, 723; intermittent, 860; "liberty," "right," 707.
- French fishery rights: 848-863; British position regarding, 848.
- French right: British admit no attempt to regulate, 858. Cowley to Walewski, Dec. 13, 1858, *U. S. C. C. Ap.*, 257, 851. Limits British sovereignty, 859-60. Lyttleton to Boyle, Apr. 19, 1904, *U. S. C. C. Ap.*, 339, 862. Palmerston to Sebastiani, July 10, 1838, *U. S. C. Ap.*, 1096, 855. Salisbury to Waddington, July 5, 1887, *U. S. C. C. Ap.*, 322, and July 9, 1889, *U. S. C. Ap.*, 1083, 853, 856. To summer fishing only, Boyle to Lyttleton, Apr. 15, 1904, *U. S. C. C. Ap.*, 338, 861.

Turner, Honorable George—Continued.*Question 1—Continued.*

- French right a servitude, Derby to Glover, June 12, 1884, *U. S. C. C. Ap.*, 308, 583.
- French right, never acknowledged as exclusive by Great Britain, 855; British objection to, 857; exclusiveness of not sustainable on principle, 857.
- French rights, Halifax arbitration, 819; 853.
- French shore question, Salisbury on, 581-3, 634.
- French treaty right, a servitude, 581, 601, 625-7, 632-37.
- Funck-Brentano and Sorel, servitudes, 650.
- Fur Seal Arbitration, speech of Russell, 13 *Proceedings*, 10, 11, authority of text writers, 689-90.
- Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, servitude, "for ever," 580, 863-4.
- Gareis, servitudes, 612.
- Germany, treaties of. *See* Treaties cited.
- Glover, Derby to, June 12, 1884, *U. S. C. C. Ap.*, 308, French right a servitude, 583.
- Gönnér, servitudes, 584, 597, 624, 693; application of servitude, 693.
- Goulburn and Robinson to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, treaty right unlimited, 740.
- Granville on limitation of sovereignty, 549.
- Granville, Thornton to: June 23, 1873, *B. C. Ap.*, 251, admission of Mr. Fish as to regulations, 792; June 30, 1873, *B. C. Ap.*, 252, right to make police regulations, 793; Mar. 14, 1881, *U. S. C. Ap.*, 732, joint regulations, 839.
- Granville to Lowell, Oct. 27, 1880, *U. S. C. Ap.*, 712: "In common," 712, Fortune Bay controversy, 836; joint regulations, 838.
- Granville to Thornton, Feb. 24, 1881, *U. S. C. Ap.*, 725, joint regulations, 838.
- GRAY: American right, Clauss, p. 87, 633. Boutwell circular, duty to observe regulations, 808. Canadian fisheries, nontreaty coasts, 823. Fishery and hunting rights as servitudes, 607. "In common," 626. Introduction of words "in common," 737. Liberty subject to regulation is servitude, 625. Marcy circulars not result of controversy, 799. Notes attached to British-French treaty of 1783, 854. Obligations versus servitudes, 597. Regulations before 1862, 752. Regulations in derogation of treaty right, 546. Sovereign rights in servitudes, 586. Sunday law included in "in common," 837.
- Great Britain admits regulations must be reasonable, 767.
- Great Britain and Newfoundland, dispute between, during 1906-7, 555.
- Great Britain, treaties of. *See* Treaties cited.
- Great Britain never admitted exclusive French right, 855.
- Great Britain, sovereignty limited by treaty of 1871, 843.
- Great Britain, statutes of. *See* Statutes cited, *Imperial*.
- Grey on limitation of sovereignty, 550.
- Grey's memorandum, Feb. 2, 1906, *U. S. C. Ap.*, 973; "in common," 712-3; fishery regulations, 772.
- Halifax arbitration: 813-26, 831. British attitude before, Evarts to Welsh, Aug. 1, 1879. *U. S. C. Ap.*, 671, 832. British position inconsistent with view at, 825. "Concurrent rights" used at, 815. Drying and curing, 817. French rights, 819, 853. "Full freedom" on treaty coasts, 818. Inexhaustible supply of fish, 816. Limits of 1818 treaty rights in, LAMMASCH, 823. Offal, 817. Over-fishing, 820. Seines, 817. Trescot on unlimited fishery before, *B. C. Ap.*, 266, 831. Vague references to regulation in, 824. Winter fishery, 820.

Turner, Honorable George—Continued.

Question 1—Continued.

- Halifax award, connection with Fortune Bay controversy, 829; payment of, 829.
- Halifax case, Evarts' report, May 17, 1880, *B. C. Ap.*, 280, 832.
- Hall, *p. 159*, servitudes, 673-4; criticised, 674-5; shows national prejudice on servitudes, 675-6.
- Halleck, *sec. 20*, servitudes, 677-8.
- Hamilton, Bathurst to, June 21, 1819, *B. C. Ap.*, 99, explains act of 1819, no restrictions on Americans, 750-1.
- Hartmann, servitudes, 607-8.
- Heffter, servitudes, 602.
- Heilborn, servitudes, 618-21; application of servitude, 694.
- Herring, disappearance of, Baird's report, 782.
- Herring fishery, 820.
- Herzegovina, Bosnia, Austria-Hungary, servitude relationship, 604.
- Hill, Thornton to, July 10, 1873, *B. C. Ap.*, 253, police regulations, 794.
- History of servitudes, 561-2.
- Hollatz, servitudes, 592, 637-40.
- Holtzendorff, servitudes, 609-10.
- Hoppin, Salisbury to, Apr. 3, 1880, *U. S. C. Ap.*, 685: "In common," 711; Fortune Bay controversy, 834.
- Hunting and fishing rights as servitudes, GRAY, 607.
- Huxley, lectures at International Fisheries Exhibition, destruction of fish, *U. S. C. C. Ap.*, 598, 599, 781.
- Idesleigh, d'Aubigny to, Sept. 20, 1886, *U. S. C. C. Ap.*, 316, French rights, 853.
- Imperial statutes: 1775, *B. C. Ap.*, 545, regulation of bank and coast fishery, 757. 1786, *B. C. Ap.*, 555, regulations, 754. 1788, *B. C. Ap.*, 561, interpretation of notes attached to French-British treaty of 1783, 855; French fishery, 749. 1819, *U. S. C. Ap.*, 112, making 1818 treaty effective, 744, 788. 1907, *U. S. C. Ap.*, 116, Order in Council suspending colonial legislation, 772.
- "In common:" 709-738; Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 279, 722. American sources considered, 719-721. Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 277, 738. Blackstone's Commentaries, 727. Bracton, *p. 375*, 726. British construction not justified colloquially, 730. British construction not justified grammatically, 730. British sources considered, 721-723. British position bare and unsupported, 713. Cardwell to Lords of Admiralty, Apr. 12, 1866, *B. C. Ap.*, 221, 710. Clarendon on, 549. Clarendon to Crampton, Oct. 11, 1855, *B. C. Ap.*, 208, 710. Coke upon Lyttleton, *pp. 263, 269*, 726. Defined in dictionaries, Johnson's, Davies's, Fleming's, Kenrick's, Ash's, Barclay's, Sheridan's, Perry's, Walker's, 717-719. Does not imply exclusive grant, FITZPATRICK, 724-5. Does not imply exclusive right, 714. Evarts' report, May 17, 1880, *B. C. Ap.*, 284, 732-4. Evarts to Welsh, Aug. 1, 1879, *U. S. C. Ap.*, 671-2, 732-4. Extended to future laws for first time, 837. French fishery, Perrier to Malmesbury, July 26, 1852, *U. S. C. C. Ap.*, 227, 723. Granville to Lowell, Oct. 27, 1880, *U. S. C. Ap.*, 712, 712. GRAY, 626. Grey's memorandum, Feb. 2, 1906, *U. S. C. Ap.*, 973, 712-13. Implies submission to regulation, 709. In diplomatic correspondence, 710-14, 720-23. In national statutes, 724. In treaties of 1854 and 1871, 714-717. In treaties of 1854, 1871, LAMMASCH, 714-16. Introduction of words, GRAY, 737. Kent's Commentaries, 727. Lord Salisbury's position,

Turner, Honorable George—Continued.*Question 1*—Continued.

549. *Malcomson v. O'Dea*, 10 *H. L.*, 591, 729. Moore and Moore, *p. 34*, 728. Rayneval, Jay, Franklin, conversation, Oct. 24, 1782, *B. C. C. Ap.*, 78, 721. Root to Reid, June 30, 1906, *U. S. C. Ap.*, 980, 713. Rush's memorandum. Mar. 29, 1824, *U. S. C. C. Ap.*, 124, 723. Salisbury to Hoppin, Apr. 3, 1880, *U. S. C. Ap.*, 685, 711. Stormont in Parliament, *B. C. C. Ap.*, 120, 721-22. Sunday law included in, *GRAY*, 837. Used by Continental Congress, 719-20. Used by negotiators, treaty of 1818, 736-740.
- Inexhaustible supply of food fishes, Halifax arbitration, 816.
- Inhabitants and state, distinction between, immaterial, 700.
- International and civil law servitudes, analogy, 502-505, 587-592.
- International law, servitude should exist in, 563.
- International law writers cited as to servitudes: Artopaeus, 576, 692; Bluntschli, *secs. 353-8*, 657; Bonfils, *secs. 339, 340, 342*, 643-5; Bulmerincq, *sec. 49*, 611, 687; Calvo, *D.*, 650; Chrétien, *secs. 259, 260*, 646-8; Clauss, 561, 570-80, 584-88, 612, 622-624, 634-637, 692-94, 695-98, 764; Creasy, *secs. 256, 257, 261*, 665-666; Despagnet, *sec. 190*, 645; Diena, 654-6; Engelbrecht, 693; Fabre, 648-9; Fiore, *T.*, *secs. 380, 829, 830*, *C.*, *secs. 615, 616, 617, 1095, 1096*, 652-4; Funck-Brentano and Sorel, 650; Gareis, 612; Gönner, 584, 597, 624, 693; Hall, *p. 159*, 673-4; Halleck, *sec. 20*, 677-8; Hartmann, 607-8; Heffter, 602; Heilborn, 618-21, 694; Hollatz, 592, 637-40; Holtzendorff, 609-10; Jellinek, 687; Klüber, *secs. 137, 138*, 599, 694; Laband, 594; Von Liszt, 616, 687; Lomonaco, 654; F. de Martens, *sec. 93*, 661-2; G. F. de Martens, 597, 660-1; Mérignhac, 648; Moser, 628, 693; Von Neuman, 621, 694; Nys, 688; Olivart, 651-2; H. B. Oppenheim, 605; L. Oppenheim, 662, 667-70, 677; Phillimore, *sec. 278*, 663-4; Pitt Cobbett, 670-673; Pradier-Fodéré, *secs. 834, 835, 837, 838, 839, 840*, 640-643, 695, 763; Rivier, 658-60, 680-84, 694; Sohms, 564; Sorel and Funck-Brentano, 650; Taylor, 678; Twiss, *sec. 245*, 665; Von Ullman, *sec. 99*, 613-16, 695; Vattel, 565-6, *Book 2, cap. 17, sec. 245*, 743; Westlake, 666-7; Wharton, *sec. 149*, 678; Wheaton, 677; Wilson and Tucker, 679; Wolff, 596, 693. Phillimore, authority of text writers, 569.
- International servitudes. *See* Servitudes.
- Interpretation of treaty. *See* Construction of treaty.
- Japan, treaties of. *See* Treaties cited.
- Jay, Franklin, Rayneval, conversation, Oct. 24, 1782, *B. C. C. Ap.*, 78, "in common," 721.
- Jellinek, objections to servitude, 687.
- Johnson's Dictionary: "in common," 717-19.
- Joint regulations. *See* Regulations, joint.
- Kenrick's Dictionary: "in common," 717.
- Kent's Commentaries: "in common," 727.
- Keyn, Queen, *v.*, *L. R. (1876)*, 2 *Ex. Div.*, 63; authority of text writers, 568; conflict between municipal law and treaty must be settled by political branch of Government, 802.
- Klüber, *sec. 137, 138*, servitudes, 599; application of servitude, 694.
- Laband, servitudes, 594.
- Labrador-Canada boundaries, LAMMASCH, 812.
- Labrador-Canada, change of boundary did not affect treaty rights, 810.
- Labrador: Newfoundland Consolidated Statutes, 1902, *U. S. C. Ap.*, 175, not applicable to, 776. Transfer from Newfoundland to Quebec, LAMMASCH, 758. Under jurisdiction of Quebec until 1867, 756.

Turner, Honorable George—Continued.

Question 1—Continued.

LAMMASCH: act of sovereignty, 698; Boutwell circular, duty to observe regulations, 810; Canada-Labrador boundaries, 812; case against Crane and Dubois, 558; commercial or extradition treaty not limit on sovereignty, 844; distinction between territorial sovereignty and general sovereignty, 696-7; 1819 statute limited to nontreaty coasts, 746; essence of real right, 846; force of laws prior and subsequent to 1871 treaty, 841; limit on sovereignty, 846; limits of 1818 treaty rights in Halifax arbitration, 823; naked servitude, 627; nature of civil law servitude, 590; obligatory right versus servitude, 764; real right without control, 847; reason for Boutwell circulars, 807; regulated right a servitude, 626; regulation of bank and coast fishery, 1775, *B. C. Ap.*, 545, 757; regulations during 1783-1812, 753, 755, 756; regulations in force in 1818, 750; right of fishing a special right, 766; Sabine's report *U. S. C. Ap.*, 1153, bultow violates treaty, 786; sovereignty limited by all treaties, 844; sovereignty only limited by real right, 844; transfer of Labrador from Newfoundland to Quebec, 758; treaties of 1854, 1871, "in common" in, 714-16; Woodbury's circular, Jan. 21, 1836, *B. C. Ap.*, 115, 807.

Lausanne treaty, 1564, servitudes, 680.

Law officers, 1855, *U. S. C. C. Ap.*, 251, no regulations prior to 1855, 752.

Laws in force at time of treaty of 1871, Salisbury did not confine himself to, 835.

Laws prior and subsequent to treaty of 1871, force of, LAMMASCH, 841.

Legislation, none on part of United States construing treaty, 788.

Legislative act construing 1818 treaty, 788.

"Liberty" and "franchise" synonymous, 705-6.

"Liberty" and "right," meaning of: 705-709; Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 279, 708-9.

"Liberty:" As used by negotiators, 1782, Adams's diary, 707; Bouvier's Law Dictionary, 706; definition, 626; French fishery, 707; in treaty of 1854, 708; is "right," British concession, 708; of 1783 was renewed, in 1818, 741; subject to regulation is servitude, GRAY, 625; to prosecute fisheries freely, 815; United States definition, 705.

Licenses, fishing, discontinued by Canada, 804.

Lieber, *p.* 65, strict construction, 703-5.

Limitation on time and manner of fishing, none in treaty, of 1871, 790.

Liszt: servitudes, 616; objections to servitude, 687.

Local laws: United States does not claim exemption from all, 545; not discussed in settlement of Fortune Bay controversy, 837.

Lomonaco, servitudes, 654.

London, treaty of, May 11, 1867, servitudes, 681.

Lowell, Blaine to, Mar. 14, 1881, *U. S. C. Ap.*, 731, joint regulations, 839.

Lowell, Granville to, Oct. 27, 1880, *U. S. C. Ap.*, 712: "In common," 712; Fortune Bay controversy, 835; joint regulations, 838.

Lowell to Blaine, Mar. 12, 1881, *U. S. C. Ap.*, 730, joint regulations, 839.

Lyttleton, Boyle to, Apr. 15, 1904, *U. S. C. C. Ap.*, 338, French right to summer fishery only, 861.

Lyttleton, Coke upon, *pp.* 268, 269, "in common," 726.

Lyttleton to Boyle, Apr. 19, 1904, *U. S. C. C. Ap.*, 339, French right to summer fishery only, 862.

McGregor, Elgin to, Aug. 8, 1906, *U. S. C. Ap.*, 986, existence of regulations, 753, 758.

Magdalen Islands under jurisdiction of Quebec until 1867, 756.

Turner, Honorable George—Continued.*Question 1—Continued.*

- Malcolmson v. O'Dea, 10 *H. L.*, 591, "in common", 729.
- Malmesbury, Perrier to, July 26, 1852, *U. S. C. C. Ap.*, 227, French fishery, "in common," 723.
- Maps showing regulations, 785.
- Marcy circulars: 795-803; circular of July 12, 1855, *B. C. Ap.*, 207, 796; Crampton to Clarendon, June 1855, *B. C. Ap.*, 206, 795, Apr. 25, 1856, *B. C. Ap.*, 210, 796; not result of controversy, GRAY, 799.
- F. de Martens, servitudes, *sec. 93*, 661-2.
- G. F. de Martens, servitudes, 597, 660-1.
- Meaning of question 1, 540-544.
- Mérignhac, servitudes, 648.
- Military servitudes, 691.
- Monroe, Bagot to, Dec. 31, 1816, *U. S. C. Ap.* 293, renewal of 1783 right, 739.
- Moore and Moore, *p. 34*, "in common," 728.
- Moser, 628; application of servitude, 693.
- Municipal law and treaty, conflict between, must be settled by political branch of government: Queen v. Keyn, *L. R.* (1876) 2 *Ex. Div.*, 63, 802; Whitney v. Robertson, 124 *U. S.*, 124, 802.
- Municipal laws: Not discussed in settlement of Fortune Bay controversy, 837. Prior and subsequent to 1871 treaty, force of, DRAGO, 842, LAMMASCH, 841. United States does not claim exemption from all, 545.
- Municipal legislation, Fortune Bay controversy, 827 *et seq.*
- Naked servitude: 625; LAMMASCH, 627.
- Nature of servitudes, 563.
- Negotiations of 1818: Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, 863-4; "in common" as used by negotiations, 736-740.
- Netherlands, treaties of. *See* Treaties cited.
- New Brunswick, statutes of. *See* Statutes cited.
- Neuman: servitudes, 621, 694; application of servitude, 694.
- Newfoundland acts making effective treaty of 1871, *U. S. C. C. Ap.*, 86, 87: 788, 790; Fish to Thornton, June 25, 1873, *U. S. C. C. Ap.*, 196, 789; Thornton to Davis, July 30, 1873, *U. S. C. C. Ap.*, 197, 789-90; Thornton to Fish, June 19, 1873, *U. S. C. C. Ap.*, 195, 788.
- Newfoundland and Great Britain, dispute between, during 1906-7, 555.
- Newfoundland, first regulations in 1905, 759.
- Newfoundland fishery regulations: Baird's report, disappearance of herring, 782. Bultow violates treaty, Sabine's report, *U. S. C. Ap.*, 1153, LAMMASCH, 786. Consolidated statutes, 1902, *U. S. C. Ap.*, 175, seining, not applicable to Labrador, 776. Encyclopaedia Britannica, 9th ed. 1879, *U. S. C. C. Ap.*, 585, destruction of fish, 779. Fishing regulations, 1905, *U. S. C. Ap.*, 201: Purse seines, effect of, 778-9, 782-3; Sunday fishing, 783; bultows, trawls, 784. Foreign fishing vessels acts, 1905, 1906: Bond's speech, Apr. 12, 1905, *U. S. C. C. Ap.*, 438, 775; Bond's speeches, *U. S. C. C. Ap.*, 413, 448, Apr. 7, 12, 1905, policy of Newfoundland legislation, 773, 774; crew, 769; Grey's memorandum, Feb. 2, 1906, *U. S. C. Ap.*, 978, 772; ice, 769; lines and seines, 769; order in council, Sept. 9, 1907, suspending acts, 772; right of visit and search, 771; right to employ aliens, 770; Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 968, 771; Root to Reid, June 30, 1906, *U. S. C. Ap.*, 985, 772; seizure and detention, 771; stringent provisions, 769. Huxley: Lecture at International Fisheries Exhibitions, *U. S. C. C. Ap.*, 598, 599, destruction of fish, 781. Labrador transferred to Quebec, LAMMASCH, 758. LAM-

Turner, Honorable George—Continued.*Question 1—Continued.*

- MASCH, Sabine's report, *U. S. C. Ap.*, 1153, bultow violates treaty, 786.
 Maps showing regulations, 785. None on treaty coast until 1862, 757.
 Policy to injure United States, 768. Sabine's report, *U. S. C. Ap.*, 1153, bultow violates treaty, LAMMASCH, 786; trap-fishing, 785. Trawl or bultow, defined, 784.
- Newfoundland foreign fishery vessels act of 1905, 1906, 555.
 Newfoundland statutes all provide against infringing treaty rights, 759.
 Newfoundland, statutes of. *See* Statutes cited.
 Newfoundlanders in crews, 769.
- Nontreaty coasts: Boutwell circular related only to, 808, 809; Canadian fisheries, GRAY, 823; 1819 statute limited to, LAMMASCH, 746.
- Norway, treaties of. *See* Treaties cited.
- Nova Scotia, act of 1786, *B. C. Ap.*, 591, regulations, 754.
 Nova Scotia, statutes of. *See* Statutes cited.
- Nys, objections to servitude, 688.
 Obligations versus servitudes, GRAY, 597.
 Obligatory right versus servitude, LAMMASCH, 764.
- O'Dea, Malcomson *v.*, 10 *H. L.*, 591, "in common," 729.
- Offal, Halifax arbitration, 817.
- Olivart, servitudes, 651-2.
- H. B. Oppenheim, servitudes, 605.
 L. Oppenheim, servitudes, 662, 667-70, 677.
- Order in Council, June 19, 1819, *U. S. C. Ap.*, 115, relating to 1819 statute, treaty construction, 747-8.
- Order in Council, Sept. 9, 1907, suspending foreign fishing vessels act, 772.
- Over-fishing, 820.
- Palmerston to Sebastiani, July 10, 1838, *U. S. C. Ap.*, 1096, French exclusive right, 855.
- Panama, treaties of. *See* Treaties cited.
- Paris, annex to treaty of, Mar. 30, 1856, servitudes, 681.
 Paris, treaty of, May 30, 1814, servitudes, 681, 684.
 Paris, treaty of, Nov. 18, 1815, servitudes, 681.
- Partition theory, FITZPATRICK, 733.
- Perpetuity, treaty right is in, 700.
- Perrier, Archibald and Strachey to, June 4, 1853, *U. S. C. C. Ap.*, 234, French right limits sovereignty, 859-60.
- Perrier to Malmesbury, July 26, 1852, *U. S. C. C. Ap.*, 227, French fishery, "in common," 723.
- Perry's dictionary: "In common," 717.
- Personal and real rights, DRAGO, 845.
- Phillimore: authority of text writers, 569; sec. 273, servitudes, 663-4.
- Pitt Cobbett: Servitudes, 670-73; shows national prejudice, 673.
- Pradier-Fodéré: *Secs.* 834, 835, 837, 838, 839, 840, servitudes, 640-43; application of servitude, 695; sec. 839, rights to trade not servitudes, 763.
- Prædium dominans*, 588-9.
- "Privilege" as used in British case, 705.
- Proprietary interest in soil necessary to servitude, 617.
- Purse seines, 778-9, 782-3.
- Quebec: Labrador transferred to from Newfoundland, LAMMASCH, 758; jurisdiction of, over Labrador until 1867, 756; Magdalen Islands under jurisdiction of, until 1867, 756.

Turner, Honorable George—Continued.

Question 1—Continued.

- Queen v. Keyn, *L. R. (1876), 2 Ex. Div., 63*, authority of text writers, 568; conflict between municipal law and treaty must be settled by political branch of government, 802.
- Question 1, summary of United States position on, 559-60, 865-7.
- Railways as economic servitudes, 691, 698.
- Rayneval, Jay, Franklin, conversation, Oct. 24, 1782, *B. C. C. Ap.*, 78, "in common," 721.
- Real and personal rights, DRAGO, 845.
- Real right, essence of, LAMMASCH, 846.
- Real right without control, LAMMASCH, 847.
- Redress of United States against regulations: Appeal to British Government, 554. Appeal to Hague Tribunal, 556. Unreasonable regulations violate treaty, 555.
- Regulated right a servitude, LAMMASCH, 626.
- Regulation of bank and coast fishery, LAMMASCH, 1775, *B. C. Ap.*, 545, 757.
- Regulation of French right never attempted by Great Britain, 858.
- Regulations: Admission of Mr. Fish referred to others than those regulating fisheries, 792. Before 1862, GRAY, 752. Dependent on balancing of conveniences, 553. Duty to observe, Boutwell circular, GRAY, 808, LAMMASCH, 810. Existence of, Elgin to McGregor, Aug. 8, 1906, *U. S. C. Ap.*, 986, 753, 758. First distinct issue regarding, 789. First in Canada, 1892, first in Newfoundland, 1905, 759. French and American rights of, similar, 863. "In common" implies submission to, 709. In derogation of treaty right, GRAY, 546. In force in 1818, LAMMASCH, 750. In force prior and subsequent to 1871 treaty, force of, DRAGO, 842. Maps showing, 785. Must be reasonable admitted by Great Britain, 767. Never enforced under statutes of 1862 and 1868, 551. New Brunswick, 1783, *B. C. Ap.*, 596, 756. Newfoundland, 1905, *U. S. C. Ap.*, 201, 778-9, 782-3, 784. None prior to 1855, law officers' statement, *U. S. C. C. Ap.*, 251, 752. Not made prior to 1862, 752. Nova Scotia, 1786, *B. C. Ap.*, 591, 754. Objected to by Fish, in 1873, 551. Of bank and coast fishery, Imperial statute, 1775, *B. C. Ap.*, 545, LAMMASCH, 757. Of 1786, *B. C. Ap.*, 555, FITZPATRICK, 754. On treaty coast, first, Newfoundland, 1862, and Canada, 1868, 757. Participation of United States in enforcing, FITZPATRICK, 542, 543, GRAY, 544. Police, Fish's admission as to right to make, 793, 794. Policy of Newfoundland to injure United States, 768. Prior and subsequent to 1871 treaty, force of, LAMMASCH, 841. Redress of United States against unreasonable: appeal to British Government, 554; appeal to Hague Tribunal, 556; unreasonable regulations violate treaty, 555. Regulations in 1783-1812, LAMMASCH, 753, 755, 756. Subjection to, Cardwell to Lords of Admiralty, Apr. 12, 1866, *B. C. Ap.*, 221, 812. United States must concur in making and enforcing, 543-46. Vague references to, in Halifax arbitration, 824. Violative of treaty, DRAGO, 843.
- Regulations, joint: Blaine to Lowell, Mar. 14, 1881, *U. S. C. Ap.*, 731, 839. British memorandum, May 3, 1882, *U. S. C. Ap.*, 742-3, 839-40. France-Great Britain, treaty of 1857, 848, treaty of 1885, 849, treaty of 1904, 851. Frelinghuysen's memorandum, May 9, 1882, *U. S. C. Ap.*, 743, 840. Granville to Thornton, Feb. 24, 1881, *U. S. C. Ap.*, 725, 838. Granville to Lowell, Oct. 27, 1880, *U. S. C. Ap.*, 713, 838. Lowell to Blaine, Mar. 12, 1881, *U. S. C. Ap.*, 730, 839. Thornton to Granville, Mar. 14, 1881, *U. S. C. Ap.*, 732, 839.
- Reid, Root to, June 30, 1906, *U. S. C. Ap.*, 980: "In common," 713; Newfoundland fishery regulations, 772.

Turner, Honorable George—Continued.

Question 1—Continued.

Restrictions; none on Americans, Bathurst to Hamilton, June 21, 1819, *B. C. Ap.*, 99, explains act of 1819, 750-1; should be expressed in treaty, Vattel, *Book 2, cap. 17, sec. 245*, 743; struck out during negotiations, 1818, 744.

"Right" and "liberty:" Adams to Castlereagh, Jan. 22, 1816, *U. S. C. Ap.*, 279, 708-9; meaning of, 705-709.

"Right," exclusive: "in common" does not imply, 714; French fishery, 707; is in perpetuity, 700; "liberty" is, British concession, 708; restricts territorial sovereignty, 700; to be unlimited, Robinson and Goulburn to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, 740.

Rivier: servitudes, 658-60, 680-84, 694; application of servitude, 694.

Robertson, Whitney v., 124 *U. S.*, 124, conflict between municipal law and treaty must be settled by political branch of Government, 802.

Robinson and Goulburn to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, right to be unlimited, 740.

Robinson to Castlereagh, Oct. 10, 1818, *B. C. Ap.*, 92: renewal of right of 1783; drying and curing, 741.

Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 968, Newfoundland fishery regulations, 771.

Root to Reid, June 30, 1906, *U. S. C. Ap.*, 980, "in common," 713.

Rule of strict construction, 701-05.

Rush's memorandum, Mar. 29, 1824, *U. S. C. C. Ap.*, 124, "in common," 723.

Russell at fur seal arbitration, 13 *Proceedings*, 10, 11, authority of text writers, 689-690.

Russia, treaties of. *See* Treaties cited.

Sabine's report, *U. S. C. Ap.*, 1153, bultow violates treaty, LAMMASCH, 786.

St. Julien treaty, 1603, servitudes, 680.

Salisbury, Lord: did not confine himself to laws in force at time of treaty of 1871, 835; on French shore question, 581-3, 634; on "in common," 549, 711; on limitation of sovereignty, 548; to Hoppin, Apr. 3, 1880, *U. S. C. Ap.*, 685, Fortune Bay controversy, 834; to Waddington, July 5, 1887, *U. S. C. Ap.*, 322, and July 9, 1889, *U. S. C. Ap.*, 1083, French exclusive right, 853, 856; to Welsh, Aug. 23, Nov. 7, 1878, Fortune Bay controversy, *U. S. C. Ap.*, 650, 658, 827, 828.

"Saving clause" in all Newfoundland statutes, 759.

Search and visit of vessels, 771.

Sebastiani, Palmerston to, July 10, 1838, *U. S. C. Ap.*, 1096, French exclusive right, 855.

Sedgwick, 326, strict construction, 703.

Seines, 769; Halifax arbitration, 817; purse, 778-9, 782-3.

Seining, 776.

Seizure and detention of vessels, 771.

Servitudes: Act of sovereignty defined, 697-8. American right, CLAUSSE on, GRAY, 633; American right is servitude, authority for, FITZPATRICK, 629; American writers follow continental, 679. Analogy between international and civil law servitudes, 502-505, 587-592. Application of doctrine: Artopaeus, 692; Austria-Hungary, Bosnia, Herzegovina, servitude relationship, 604; economic servitudes, cable lines, 692, fisheries, 692, railways, 691, 698; Engelbrecht, 693; Gönner, 693; Heilborn, 694; Klüber, 694; military servitudes, 691; Moser, 693; Von Neumann, 694; Pradier-Fodéré, 695; Rivier, 694; Von Ullmann, 695; Wolf, 693. Artopaeus, 576. Authority of text writers: 568, Lord Esher, 570, Phillimore, 569, Queen v. Keyn, *L. R.* (1876), 2 *Exch. Div.*, 63, 568. Bluntschli, *secs. 353-8*, 657. Bonfils, *secs. 339*,

Turner, Honorable George—Continued.*Question 1—Continued.*

340, 342, 643-45. British position in 1818, 580. Bulmerincq, *sec.* 49, 611. Calvo, D., 650. Chretien, *secs.* 259, 260, 646-48. Civil and international law servitudes, analogy, 502-505, 587-592. Civil law servitude, nature of, LAMMASCH, 590. Clauss, 561, 570-80, 584-588, 612, 622-624, 627-634, 692-694, 695-698. Continental writers unanimous, 663. Creasy, *secs.* 256, 257, 261, 665-6. Derby to Glover, June 12, 1884, *U. S. C. C. Ap.*, 308, French right, 583. Despagne, *sec.* 190, 645. Diena, 654-56. Distinction between state and inhabitants immaterial, 700. Doctrine of servitude in diplomatic correspondence, DRAGO, 580. Economic servitude must be enjoyed by citizens, 639. Economic servitude passes to successor of dominant nation, 847. Economic servitudes, rule of strict construction not necessary to determine existence of, 611. Fabre, 648-9. Fiore, T.; *sec.* 380, 829, 830, C.; *sec.* 615, 1095, 1096, 652-4. Fish, right to, a servitude in Roman law, FITZPATRICK, 591. Fishery and hunting rights, GRAY, 607. FITZPATRICK: 845; authority that American right is servitude, 629. Implied abrogation of sovereignty, 626; right to fish a servitude in Roman law, 591. French and American right same, 683. French right a servitude, 581, 601, 625-7, 632-7. French right, Derby to Glover, June 12, 1884, *U. S. C. C. Ap.*, 308, 583. French treaty right, 581, 601, 625-27, 632-37. Funck-Brentano and Sorel, 650. Gallatin to Adams, Nov. 6, 1818, *B. C. Ap.*, 97, 864. Gareis, 612. Gönner, 584, 597, 624, 693. GRAY: Clauss on American right, 633; fishery and hunting rights, 607; "in common," 626, liberty subject to regulation is servitude, 625; obligations versus servitudes, 597; sovereign rights, 586. Hall, p. 159, 673-4. Hall criticized, 674-5. Hall shows national prejudice, 675-6. Halleck, *sec.* 20, 677-8. Hartmann, 607-8. Heffter, 602; Heilborn 618-21. History, 561-2. Hollatz, 592, 637-40. Holtzendorff, 609-10. "In common," GRAY, 626. Inhabitants and state, distinction between, immaterial, 700. Klüber, *sec.* 137, 138, 599. Laband, 594. LAMMASCH: act of sovereignty, 698; distinction between territorial sovereignty and general sovereignty, 696-7; naked servitude, 627; nature of civil law servitude, 590; regulated right a servitude, 626. "Liberty," definition, 626. Liberty subject to regulation is servitude, GRAY, 625. Liszt, 616. Lomonaco, 654. F. de Martens, 661-2. G. F. de Martens, 597, 660-1. Mérignhac, 648. Moser, 628. Naked servitude 625. LAMMASCH, 627. Nature of servitudes, 563. Von Neumann, 621, 694. Objections to servitude conception: Bulmerincq, *sec.* 49, 687, Jellinek, 687, Liszt, 687, Nys, 688. Obligations versus servitudes, GRAY, 597. Obligatory right versus LAMMASCH, 764. Olivart, 651-2. H. B. Oppenheim, 605. L. Oppenheim, 662, 667-70, 677. Perpetuity, right is one in, 700. Phillimore, *sec.* 273, 663-4. Pitt Cobbett, 670-73, shows national prejudice, 673. Pradier-Fodéré, *sec.* 834, 835, 837-40, 640-43. Praedium dominans, 588-9. Proprietary interest in soil necessary to servitude, 617. Regulated right as servitude, LAMMASCH, 626. Right is one in perpetuity, 700. Right restricts territorial sovereignty, 700. Rights to trade are not, Pradier-Fodéré, *sec.* 839, 763. Rivier, 658-60, 680-684, 694. Salisbury on French shore question, 581-3, 634. Servitude right in treaty determined by strict construction, 600. Servitude should exist in international law, 563. Servitude to be exercised *civiliter*, 554. Servitudes long existent in practice of nations, 565. Sohms, 564. Sorel and Funck-Brentano, 650. Sovereign rights, GRAY, 586. Sovereignty, act of, defined 697-8. Sovereignty, act of, LAMMASCH, 698. Sovereignty can not be eliminated, 599. Sovereignty, general and territorial, distinguished, LAMMASCH, 696-7. Sovereignty, implied abrogation of, FITZPATRICK, 626.

Turner, Honorable George—Continued.*Question 1—Continued.*

Sovereignty, territorial, restricted by treaty right, 700. State and inhabitants, distinction between, immaterial, 700. Strict construction of treaty establishing servitude right, 600. Strict construction, rule of, not necessary to determine existence of economic servitudes, 611. Summary of United States position, 567. Taylor, 678. Territorial restriction necessary to international servitude, 614. Territorial sovereignty and general sovereignty distinguished, LAMMASCH, 696-7. Territorial sovereignty restricted by treaty right, 700. Trading rights not servitudes, 761-67, Clauss, 764; Pradier-Fodéré, *sec. 339*, 763. Treaties creating servitudes: Annex to treaty of Paris, Mar. 30, 1856, 681; Belgium-Netherlands, Apr. 19, 1839, 681; Berlin, 1878, 682; Congress of Vienna, June 9, 1815, 682; France-Switzerland, Dec. 8, 1862, 681; Lausanne, 1564, 680; London, May 11, 1867, 681; Norway-Sweden, Oct. 26, 1905, 686; May 30, 1814, treaty of Paris, 681, 684; Paris, Nov. 18, 1815, 681; Peace of Versailles, 1783, 684; Russia-Japan, Sept. 5, 1905, 686; St. Julien, 1603, 680; Spain-Germany, June 30, 1899, 685; United States-Panama, Nov. 18, 1903, 685. Treaty grants right from nation to nation, 699. Treaty of 1818 created international servitude, 546, 701. Treaty to be strictly construed, 562. Twiss, 665. Ullmann, *sec. 99*, 613-16, 695. United States position, summary of, 567. Vattel, 565-6, 656. Westlake, 666-7. Wharton, 678. Wheaton, 677. Wilson and Tucker, 679. Wolff, 596, 693.

Sheridan's Dictionary: "In common," 717.

Shore rights of United States, 552.

Sillem, Attorney General, *v. 2 H. & C.*, 531, strict construction, 702.

Sohms, servitudes, 564.

Sorel and Funck-Brentano, servitudes, 650.

Sovereign acts to be performed by United States, 766.

Sovereign rights in servitudes, GRAY, 586.

Sovereignty: Act of, defined, 697-8, LAMMASCH, 698. British admission of limitation of, 767. British, limited by treaty, 829. Can not be eliminated, 599. General and territorial, distinguished, LAMMASCH, 696-7. Implied abrogation of, servitudes, FITZPATRICK, 626. Limitation of: 843-47; British position to-day as shown in its case and argument, 550; Finlay's position, 548; Granville's position, 549; Grey's position, 550; Salisbury's position, 548; limited by all treaties, DRAGO, 845, LAMMASCH, 844; limited by French right, Archibald and Strachey to Perrier, June 4, 1853, *U. S. C. C. Ap.*, 284, 859-60; not limited by commercial or extradition treaty, LAMMASCH, 844; of Great Britain limited by 1871 treaty, 843; limited by all treaties, LAMMASCH, 844; only limited by real right, LAMMASCH, 844; restricted without express words, FITZPATRICK, 547; territorial, restricted by treaty right, 700; what is limit on, LAMMASCH, 846.

Spain, treaties of. *See* Treaties cited.

Special Agreement of 1909, *sec. 4* affords relief from regulations, 556-7.

State and inhabitants, distinction between, immaterial, 700.

Statutes cited: *Canada*: Foreign fishing vessels act, May 12, 1870, *U. S. C. Ap.*, 186, 806. *Imperial*: 1788, *B. C. Ap.*, 561, French fishery, 749; 1775, *B. C. Ap.*, 545, regulation of bank and coast fishery, 757; 1786, *B. C. Ap.*, 555, regulations, 754; 1819, *U. S. C. Ap.*, 112, making 1818 treaty effective, 744, 788; 1907, order in council, 772. *New Brunswick*: 1783, *B. C. Ap.*, 596, regulations, 756. *Newfoundland*: 1873-4, acts making effective treaty of 1871, *U. S. C. C. Ap.*, 86, 87, 788, 790; 1902, consolidated Statutes,

Turner, Honorable George—Continued.

Question 1—Continued.

- U. S. C. Ap.*, 175, 776; 1905, 1906, foreign fishing vessels acts, *U. S. C. Ap.*, 197, 555, 769-771; 1905, fishing regulations, *U. S. C. Ap.*, 201, 778-9, 782-3, 784. *Nova Scotia*: 1786, *B. C. Ap.*, 591, regulations, 754.
- Stormont in Parliament: "In common," *B. C. C. Ap.*, 120, 721-22.
- Strachey and Archibald to Perrier, June 4, 1853, *U. S. C. C. Ap.*, 234, French right limitation of sovereignty, 859-60.
- Strict construction. *See* Construction.
- Summary of United States position on question 1, 559-560, 865-67.
- Sunday fishing, 783.
- Sunday law included in "in common," GRAY, 837.
- Sutherland, *sec.* 347, strict construction, 701-2.
- Sweden, treaties of. *See* Treaties cited.
- Switzerland, treaties of. *See* Treaties cited.
- Taylor, servitudes, 678.
- Territorial restriction necessary to international servitude, 614.
- Territorial sovereignty and general sovereignty distinguished, LAMMASCH, 696-7.
- Territorial sovereignty restricted by treaty right, 700.
- Thornton, Fish to: Apr. 21, 1870, *U. S. C. Ap.*, 581, treaty coasts, 804; May 31, 1870, *U. S. C.*, 149, limits of treaty coasts, 831; June 8, 1870, *B. C. Ap.*, 236, objections to Cardwell circular, 812; June 25, 1873, *U. S. C. C. Ap.*, 196, Newfoundland act making effective treaty of 1871, 789.
- Thornton, Granville to, Feb. 24, 1881, *U. S. C. Ap.*, 725, joint regulations, 838.
- Thornton to Davis: May 26, 1870, *U. S. C. Ap.*, 589, Canadian foreign fishing vessels act of May 12, 1870, 805; July 30, 1873, *U. S. C. C. Ap.*, 197, Newfoundland act making effective 1871 treaty, 789-90.
- Thornton to Granville: June 23, 1873, *B. C. Ap.*, 251, admission of Mr. Fish as to regulations, 792; June 30, 1873, *B. C. Ap.*, 252, right to make police regulations, 793; Mar. 14, 1881, *U. S. C. Ap.*, 732, joint regulations, 839.
- Thornton to Fish: Apr. 14, 1870, *U. S. C. Ap.*, 580, change of Canadian policy, 803; Apr. 22, 1870, *U. S. C. Ap.*, 581, May 18, 1870, *U. S. C. Ap.*, 588, treaty coasts, 804; June 19, 1873, *U. S. C. C. Ap.*, 195, Newfoundland act making effective 1871 treaty, 788.
- Thornton to Hill, July 10, 1873, *B. C. Ap.*, 253, police regulations, 794.
- Trade, treaty rights to, not servitudes, 761-67.
- Trading rights not servitudes: Clauss, 764; Pradier-Fodéré, *sec.* 839, 763.
- Trap-fishing, 785.
- Trawl or bultow defined, 785.
- Trawls, 784.
- Treaties cited: 1564, Lausanne, servitudes, 680. 1603, St. Julien, servitudes, 680. 1783, peace of Versailles, servitudes, 684. Paris, May 30, 1814, servitudes, 681, 684. June 9, 1815, Congress of Vienna, servitudes, 682. Nov. 18, 1815, Paris, servitudes, 681. 1818, construction of, 701-865; contemporaneous construction, 744; created international servitude, 546, 701; to be strictly construed, 562. Apr. 19, 1839, Belgium-Netherlands, servitudes, 681. 1854, "liberty" therein, 708; "in common" in, 714-717, LAMMASCH, 716. Mar. 30, 1856, annex to treaty of Paris, servitudes, 681. 1857, France-Great Britain, *U. S. C. Ap.*, 67, fishery rights, joint regulations, 848; "in common" in, 714-717, LAMMASCH, 716. Dec. 8, 1862, France-Switzerland, servitudes, 681. May 11, 1867, London, servitudes, 681. 1878, Berlin, servitudes, 682. 1871, American position *re*

Turner, Honorable George—Continued.

Question 1—Continued.

- British fisherman in American waters, 716; limited sovereignty of Great Britain, 843. 1885, France-Great Britain, *U. S. C. Ap.*, 71, fishery rights, joint regulations, 849. June 30, 1899, Spain-Germany, servitudes, 685. Nov. 18, 1903, United States-Panama, servitudes, 685. 1904, France-Great Britain, *B. C. Ap.*, 48, fishery rights, joint regulations, 851, French right intermittent, 861; treaty right is in perpetuity, 700. Sept. 5, 1905, Russia-Japan, servitudes, 686. Oct. 26, 1905, Norway-Sweden, servitudes, 686.
- Treaty coasts: Fish to Thornton, Apr. 21, 1870, *U. S. C. Ap.*, 581, 804; "full freedom" on, Halifax arbitration, 818; limits of, Fish to Thornton, May 31, 1870, *U. S. C.*, 149, 831; Thornton to Fish, Apr. 22, 1870, *U. S. C. Ap.*, 581, May 18, 1870, *U. S. C. Ap.*, 588, 804; unregulated until 1862 by Newfoundland and 1868 by Canada, 757.
- Treaty grants right from nation to nation, 699.
- Treaty right of 1783, renewal of, Bagot to Monroe, Dec. 31, 1816, *U. S. C. Ap.*, 293, 739.
- Treaty rights: Newfoundland statutes all provide against infringing, 759; not affected by Labrador-Canada change of boundary, 810; of French and American identical, 683, 853; to trade not servitudes, 761-767.
- Trescot on unlimited fishery before Halifax arbitration, *B. C. Ap.*, 266, 831. Twiss, *sec. 245*, servitudes, 665.
- Ullmann: servitudes, *sec. 99*, 613-16, 695; application of servitude, 695.
- United States must concur in making and enforcing regulations, 543-546.
- United States, treaties of. *See* Treaties cited.
- United States position on servitudes summarized, 567.
- United States position, summary of, on question 1, 559-560, 865-867.
- United States, shore rights of, 552; sovereign acts to be performed by, 766.
- Vattel: servitudes, 565-6; *Book 2, cap. 17, sec. 245*, restrictions should be expressed in treaty, 743.
- Versailles, peace of, 1783, servitudes, 684.
- Vienna, Congress of, June 9, 1815, servitudes, 682.
- Visit and search of vessels, 771.
- Waddington, Salisbury to, July 5, 1887, *U. S. C. C. Ap.*, 322, and July 9, 1889, *U. S. C. Ap.*, 1083, French exclusive right, 853, 856.
- Walewski, Cowley to, Dec. 13, 1858, *U. S. C. C. Ap.*, 257, French right, 851.
- Walker's Dictionary: "In common," 717.
- Welsh, Evarts to: Sept. 28, 1878, *U. S. C. Ap.*, 652, Nov. 4, 8, 9, 12, 16, 1878, *U. S. C. C. Ap.*, 201-3, Fortune Bay controversy, and payment of Halifax award, 827-31; Aug. 1, 1879, *U. S. C. Ap.*, 671-2, Halifax arbitration, British attitude before, Fortune Bay controversy, 832-3, "in common," 732-4.
- Welsh, Salisbury to, Aug. 23, Nov. 7, 1878, Fortune Bay controversy, *U. S. C. Ap.*, 650, 658, 827, 828.
- Westlake, servitudes, 666-7.
- Wharton, servitudes, 678.
- Wheaton, servitudes, 677.
- Whitney v. Robertson, 124 *U. S.*, 124, conflict between municipal law and treaty must be settled by political branch of government, 802.
- Wilson and Tucker, servitudes, 679.
- Winter fishery, Halifax arbitration, 820.
- Wolff, servitudes, 596; application of servitude, 693.
- Woodbury's circular, Jan. 21, 1836, *B. C. Ap.*, 115, LAMMASCH, 807.

Turner, Honorable George—Continued.

Question 2, pp. 867-883. (July 1, 1910.)

Agents and servants may exercise right, *Wickham v. Hawker*, 7 *M. & W.*, *Ex. Rep.* 63, 881-2.

Agents may fish, 881-3.

British contend that right to employ Newfoundlanders is involved, 868.

Categorical answer to question 2, effect of: GRAY, 875, 879; LAMMASCH, 876, 879.

Durand, Root to, Oct. 19, 1905, *U. S. C. Ap.*, 967, rights of vessels, 870.

Employment of Newfoundlanders not within submission, 876-83, 892-3.

Fishing vessels received rights under treaty, 869.

Gardner, right to employ Newfoundlanders, 877.

GRAY: Effect of categorical answer to question 2, 875, 879.

Great Britain insists that employment of Newfoundlanders be decided, 880.

Grey to Reid: Feb. 2, 1906, *U. S. C. Ap.*, 972, rights of vessels, 871-2; right to employ Newfoundlanders, LAMMASCH, 874. June 20, 1907, *U. S. C. Ap.*, 1005, right to fish limited to inhabitants of United States, 873.

Hawker, *Wickham v.*, 7 *M. & W.*, *Ex. Rep.* 63, servants and agents may exercise right, 881-2.

Inhabitants, rights of, as distinguished from vessels, 869-73.

LAMMASCH: effect of categorical answer to question 2, 876, 879; Grey to Reid, Feb. 2, 1906, *U. S. C. Ap.*, 972, right to employ Newfoundlanders, 874.

Meaning of question 2, 867-881.

National right, treaty right is, 881.

Newfoundlanders, employment of: no assertion of right to employ contrary to local law, 873; Gardner's statement, 877; Great Britain insists on decision of question as to, 880; not within submission, 876-83; 892-3; right to employ, 868, 873-4.

Noninhabitants, right to employ, 873.

Norfolk, Duchess of, case of, *Year Book Henry VII*, 882.

Reid, Grey to: Feb. 2, 1906, *U. S. C. Ap.*, 972, right to employ Newfoundlanders; LAMMASCH, 874; rights of vessels, 871-2. June 20, 1907, *U. S. C. Ap.*, 1005, right to fish limited to inhabitants of United States, 873.

Reid, Root to, June 30, 1906, *U. S. C. Ap.*, 979, rights of vessels, 870-1, 872.

Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 967, rights of vessels, 870.

Root to Reid, June 30, 1906, *U. S. C. Ap.*, 979, rights of vessels, 870-1, 872.

Servants and agents may exercise right, *Wickham v. Hawker*, 7 *M. & W.*, *Ex. Rep.* 63, 881-2.

Servants may fish, 881-3.

Treaty right is national right, 881.

"Vessels," fishing, have rights under treaty, 869.

Vessels, rights of: 869-873; Root to Durand, Oct. 19, 1905, *U. S. C. Ap.*, 967, 870; Root to Reid, June 30, 1906, *U. S. C. Ap.*, 979, 870-1.

Wickham v. Hawker, 7 *M. & W.*, *Ex. Rep.* 63, servants and agents may exercise right, 881-2.

Question 3, pp. 883-899. (July 1, 1910.)

British fishing vessels in 1818 exempt from dues, 895.

British statement of issues, 883.

Canadian fishermen, light dues on, GRAY, 886.

Castlereagh, Robinson and Goulburn to, Sept., 1818, *B. C. Ap.*, 86, payment of dues, etc., 894.

Commercial privileges: not covered by question 3, 899; not part of liberties of 1818 treaty, 884.

Commercial vessels not analogous to fishing vessels as regards dues, 885.

Turner, Honorable George—Continued.*Question 3—Continued.*

Construction of treaty of 1818, regarding payment of dues, 891.

Convenience does not govern validity of 1818 treaty, report of Privy Council of Canada, approved June 14, 1886, *U. S. C. Ap.*, 810, 898.

Dues: admits injustice of imposing, on Americans, Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1007, 897; British fishing vessels in 1818 exempt from, 895; construction of treaty of 1818 concerning, 891; exception of French vessels from, LAMMASCH, 896, 897; French vessels exempted from, Newfoundland statute of, May 10, 1906, *U. S. C. C. Ap.*, 88, 886; negotiations in 1818 did not contemplate, 891; payment of, Robinson and Goulburn to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, 894; treaty of 1818 did not contemplate imposition of, 888. *See* Light dues.

Entry, light and other dues not collectible from fishing vessels under international law, 885.

Fishing vessels, British, exempt from dues in 1818, 895.

Fishing vessels, commercial vessels not analogous to, as regards dues, 885.

Fishing vessels in special class in international law, 895.

French right, vessels not liable to dues in exercise of, 886.

French vessels, exception of, from dues: LAMMASCH, 896, 897; Newfoundland statute of May 10, 1906, *U. S. C. C. Ap.*, 88, 886.

Goulburn and Robinson to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, payment of dues, etc., 894.

GRAY: light dues on Canadian fishermen, 886.

Great Britain, statutes of. *See* Statutes cited.

Grey to Reid, June 20, 1907, *U. S. C. Ap.*, 1007, admits injustice of imposing dues on Americans, 897.

Joint regulations. *See* Regulations, joint.

Labrador, condition in, 1818, 890.

LAMMASCH: exception of French vessels from dues, 896, 897.

Light and other dues not collectible from fishing vessels under international law, 885.

Light dues in Newfoundland removed, statute of 1899, *B. C. Ap.*, 755, 896.

Light dues on Canadian fishermen, GRAY, 886.

Negotiations in 1818: did not contemplate payment of dues, 891; smuggling provisions, 894.

Newfoundland: imperial policy toward, 888; statute of 1899, *B. C. Ap.*, 755, light dues removed, 896; statute of May 10, 1906, *U. S. C. C. Ap.*, 88, French vessels exempted from dues, 886. Statutes, *see* Statutes cited.

Policy of Great Britain toward Newfoundland: 888; Sabine's report, 890; Winter, 888-890.

Population of Newfoundland, Sabine's report, 890.

Privy Council of Canada, report, approved June 14, 1886, *U. S. C. Ap.*, 810, treaty of 1818, validity depends not on convenience, 898.

Question 3 does not relate to commercial privileges, 899.

Regulations, joint, Root to Reid, June 30, 1906, *U. S. C. Ap.*, 983, 887.

Regulations of ports apply to trading vessels, 884.

Reid, Grey to, June 20, 1907, *U. S. C. Ap.*, 1007, admits injustice of imposing dues on Americans, 897.

Reid, Root to, *U. S. C. Ap.*, 983, June 30, 1906, joint regulations, 887.

Report of Privy Council of Canada, approved June 14, 1886, *U. S. C. Ap.*, 810, treaty of 1818, validity depends not on convenience, 898.

Robinson and Goulburn to Castlereagh, Sept., 1818, *B. C. Ap.*, 86, payment of dues, etc., 894.

Turner, Honorable George—Continued.

Question 3—Continued.

Root to Reid, *U. S. C. Ap.*, 983, June 30, 1906, joint regulations, 887.

Sabine's report, population of Newfoundland, and policy of Great Britain, 890.

Servitude may be moderated only by mutual agreement, 887.

Smuggling provisions, negotiations of 1818, 894.

Statutes cited: *Imperial*: 1775, British fishing vessels exempt from dues in 1818, 895; *Newfoundland*: 1899, light dues in Newfoundland removed, *B. C. Ap.*, 755, 896; 1906, *U. S. C. C. Ap.*, 88, French vessels exempted from dues, 886.

Trading vessels not immune from port regulations, 884; validity of, not determined by convenience, report of Privy Council of Canada, June 14, 1886, *U. S. C. Ap.*, 810, 898.

Treaty of 1818 did not contemplate imposition of dues, 888.

Winter: Imperial policy toward Newfoundland, 888-90.

Question 4, pp. 899-908. (July 1, 1910.)

Bayard to Phelps, Nov. 6, 1886, *U. S. C. Ap.*, 851, vessels forced into ports in distress, 906-7.

Brown & Jenks, *Hallett v.*, 3 *Cranch*, 210, vessels in distress relieved of certain duties, 906.

Cases cited: "Charlotta," 1 *Edwards*, 152, vessels in distress may enter blockaded port, 906; "Concord," 9 *Cranch*, 387, vessels in distress relieved of certain duties, 906; "Eleanor," 1 *Edwards*, 159-160, vessels in distress relieved of certain duties, 906; "Forest King," 17 *Wallace (U. S.)*, 29, vessels in distress may enter blockaded port, 906; "Hurtige Hane," 2 *Robinson*, 127, vessels in distress may enter blockaded port, 906; *Hallett v. Brown & Jenks*, 3 *Cranch*, 210, vessels in distress relieved of certain duties, 906; "Neustra Senora de Ragla," 17 *Wall.*, 30, vessels in distress may enter blockaded port, 906; "Short Staple," 9 *Cranch*, 55, vessels in distress relieved of certain duties, 906.

"Charlotta," 1 *Edwards*, 152, vessels in distress may enter blockaded port, 906.

Commercial privileges not covered by question 4, 899.

Conclusion, question 4, 908-910.

"Concord," 9 *Cranch*, 387, vessels in distress relieved of certain duties, 906.

Customhouse, fishermen need not seek, 901.

"Eleanor," 1 *Edwards*, 159-160, vessels in distress relieved of certain duties, 906.

Entry at ports, 900.

"Forest King," 17 *Wallace (U. S.)*, 29, vessels in distress may enter blockaded port, 906.

Hallett v. Brown & Jenks, 3 *Cranch*, 210, vessels in distress relieved of certain duties, 906.

"Hurtige Hane," 2 *Robinson*, 127, vessels in distress may enter blockaded port, 906.

International law writers cited: Hall, 711, vessels in distress may enter blockaded port, 905; Halleck, II: 234, vessels in distress may enter blockaded port, 905.

Negotiators of 1818, intent of, 900.

"Neustra Senora de Ragla," 17 *Wall.*, 30, vessels in distress may enter blockaded port, 906.

Phelps, Bayard to, Nov. 6, 1886, *U. S. C. Ap.*, 851, vessels forced into ports in distress, 906-7.

Question 4 does not relate to commercial privileges, 899.

Turner, Honorable George—Continued.

Question 4—Continued.

Report, fishermen need not go to distant customhouse to, 900.

Restrictions: in treaty not revenue restrictions, 901; should be reasonable, 903; should not nullify treaty right, 904.

"Short Staple," 9 *Cranch*, 55, vessels in distress relieved of certain duties, 906. Smuggling, 901; restriction in draft struck out, 901.

Treaty right should not be nullified by restrictions, 904.

Vessels in distress forced into port, Bayard to Phelps, Nov. 6, 1866, *U. S. C. Ap.*, 851, 906-7.

Vessels in distress, forced into ports, relieved of certain contractual liabilities: "Concord," 9 *Cranch*, 387, 906; "Eleanor," 1 *Edwards*, 159-160, 906; Hallett v. Brown & Jenks, 3 *Cranch*, 210, 906; "Short Staple," 9 *Cranch*, 55, 906.

Vessel in distress may enter blockaded port: Hall, 711, 905; "Charlotta," 1 *Edwards*, 152, 906; "Forest King," 17 *Wallace (U. S.)*, 29, 906; Halleck: II: 234, 905; "Hurtige Hane," 2 *Robinson*, 127, 906; "Neustra Senora de Ragla," 17 *Wall.*, 30, 906.

Vessels seeking ports only in distress should not pay dues, 905-908.

Warren, Honorable Charles B.

Question 5, pp. 997-1228. (July 5, 7, 8, 11, 1910.)

Aberdeen-Everett correspondence, 1844-5, British position not acquiesced in by Americans, 1170-73.

Aberdeen, Everett to: Aug. 10, 1843, *B. C. Ap.*, 131, cod fishing in bays prior to mackerel fishing, 1162. May 25, 1844, *U. S. C. Ap.*, 478, treaty considers "general outline" of coast, 1170-1. Mar. 25, 1845, *U. S. C. Ap.*, 497, Bay of Fundy, relaxation of British position, 1172-3.

Aberdeen to Everett, Mar. 10, 1845, *U. S. C. Ap.*, 489: opinion of law officers of Crown, 1169; Bay of Fundy, relaxation of British position, 1171.

Abrogation of 1783 treaty, 1031.

Adams, pp. 211-215, 223, cod fishing in bays prior to mackerel fishery, 1160, 1161.

Adams-Bathurst correspondence, 1041-43, 1102-06.

Adams, Bathurst to, Oct. 30, 1815, *U. S. C. Ap.*, 278, renewal of liberties, 1105.

Adams, Castlereagh to, May 7, 1817, *U. S. C. Ap.*, 295, British limits, 1107.

Adams, Gallatin and Rush to, Oct. 20, 1818, *U. S. C. Ap.*, 306: report, "forever," "any" of the coasts, 1128-9, 1130-32; 3-mile limit, 1015, 1128-9, 1130-2, 1151; Hudson Bay, 1128-32, 1151; Franco-American controversy, 1151.

Adams' diary: Nov. 25, 1782, *B. C. C. Ap.*, 101, cod and haddock in bays, 1159. July 8, 1823, *B. C. Ap.*, 108, Mitchell's map not used 1818 negotiations, 1148.

Adams, Journal, *U. S. C. Ap.*, 223, right to fishery, 1033.

Adams, Monroe to: July 21, 1815, *U. S. C. Ap.*, 263, Jaseur incident, right to fish unshaken, 1101. Feb. 27, 1816, *U. S. C. Ap.*, 287, fishing, curing, and drying, 1106.

Adams' opinion, Dec. 26, 1814, *B. C. C. Ap.*, 168, "liberty," "rights," 1097-8.

Adams, Rush and Gallatin to, Oct. 20, 1818, *U. S. C. Ap.*, 306: Hudson Bay, 1128-9, 1130-2, 1151; 3-mile limit, 1015, 1128-9, 1130-2; Franco-American controversy, 1151; report, "forever," "any of the coasts," 1128-9, 1130-2.

Adams, Russell to, Feb. 11, 1815, *B. C. C. Ap.*, 150, Mississippi and the fisheries, 1096.

Warren, Honorable Charles B—Continued.*Question 5—Continued.*

- Adams-Russell controversy, British claim of broad jurisdiction, 1095-98.
- Adams, Seward to, Apr. 10, 1866, *U. S. C. Ap.*, 566, "historic position" of United States regarding bays, 1013.
- Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, territorial jurisdiction, 1103.
- Adams to Gallatin and Rush, July 28, 1818, *U. S. C. Ap.*, 304: instructions, 1104-5, 1109; fishing, curing, drying, 1109.
- Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 65: Bathurst on territorial jurisdiction, 1045, 1102; LAMMASCH, 1045.
- Adams to Russell: 1822, *B. C. C. Ap.*, 165, renunciation clause, 1097. May 3, 1822, *B. C. C. Ap.*, 162, 3-mile limit, 1097, 1140; renunciation clause, 1097.
- Alaskan boundary arbitration: British position re 3-mile limit, 1091-95. Did not concern maritime jurisdiction, LAMMASCH, 1094. Finlay, *Proceedings*, 5:237, Conception Bay case decision narrow, 1205.
- Alverstone, fur seal arbitration, 13 *Proceedings* 544, British claim of broad jurisdiction, 1099.
- American commissioners, British to, Dec. 22, 1814, *U. S. C. Ap.*, 256, Mississippi River, 1071.
- American commissioners, Monroe to, June 25, 1814, *U. S. C. Ap.*, 242, fisheries not to be discussed, treaty of Ghent, 1070.
- American commissioners to Monroe, Dec. 25, 1814, *U. S. C. Ap.*, 256, fishery within exclusive British jurisdiction, 1072.
- American draft, renunciatory clause, 1113.
- American, Franco-, controversy. *See* Franco-American controversy.
- American interpretation of jurisdiction concurred in by British, 1023.
- Anglo-Russian treaty, 1825, "coast" in, 1092.
- Ann, The, 1 *Gallison's Reports* 62, cannon-shot rule is 3 miles, 1053.
- Anna, The, 5 *Robinson's Admiralty Reports* 373, cannon-shot rule is 3 miles, 1053.
- "Any" in renunciatory clause, LAMMASCH, GRAY, FITZPATRICK, DRAGO, 1112.
- "Any" of the coasts, report, Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1128-9, 1130-32.
- "Argus," case of: Seizure of, 16 miles off shore, test case, 1169-70, 1173-77. Umpire's award, *U. S. C. 133*, no treaty violation, 1175.
- Auckland and Holland to Howick, Nov. 14, 1806, *B. C. Ap.*, 61, cannon shot or 3-mile general limit, 1056.
- Azuni, *sec. 15, p. 205*, cannon-shot rule is 3-mile limit, 1208, 1226.
- Baker, Bathurst to, Sept. 7, 1815, *B. C. Ap.*, 64, exclusion from bays, LAMMASCH, 1045.
- Baker-Monroe correspondence, 1815, Jaseur incident, 1100.
- Bannerman to Grey, Feb. 12, 1852, *U. S. C. C. Ap.*, 217, regulations, Prince Edward Island act of 1843, never enforced, 1177.
- Bathurst-Adams correspondence, 1041-43; 1102-06.
- Bathurst, Adams to, Sept. 25, 1815, *U. S. C. Ap.*, 268, territorial jurisdiction, 1103.
- Bathurst made no claim to extended jurisdiction, 1048.
- Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 278, renewal of liberties, 1105.
- Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, exclusion from bays, LAMMASCH, 1045.
- Bathurst to British commissioners, Oct. 18, 1814, *O. A. Ap.*, 2247, maritime jurisdiction, 1026; 3-mile limit, 1041, 1098.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

Bathurst's position as regards bays in 1815, 1042, 1047-49.

Bay: "British," 3 miles from, Cardwell's letter, April 22, 1866, *B. C. Ap.*, 221, 1023. British bay defined, Report of Senate Committee on Foreign Relations *re* Chamberlain-Bayard treaty of 1888, 1197. Buzzard's, jurisdiction of United States over, 1086-88. Chesapeake, case of, 1204. Conception, case of, 1087, 1204-5. Conception, United States never acknowledged British jurisdiction over, 1087, 1206. Delaware, case of, 1202-4. Meaning of, Paine's report, 1839, *U. S. C. Ap.*, 451, LAMMASCH, 1016. Method of acquiring jurisdiction over, 1202. Of Chaleurs fishing lost to United States, Lyman, 2:100, 1155-6. Of Fundy. *See* Fundy, Bay of. "Of His Majesty's dominions," Kimberley to Young, Oct. 10, 1870, *U. S. C. Ap.*, 628, 1024-5. Port au Port, limits of, Newfoundland fishing regulations, 1908, *U. S. C. Ap.*, 209, 1144, 1145. St. George's, British jurisdiction over not admitted, Franco-American controversy, 1152. Territorial within geographical, GRAY, 1138. Webster's circular does not accept British construction, 1180. Webster's nonacceptance of British construction, Crampton to Malmesbury, Aug. 9, 1852, *B. C. Ap.*, 168, 1183. White: attempt to delimit, 1143-4; limits of, GRAY, 1144; limits of, Newfoundland fishing regulations, 1908, *U. S. C. Ap.*, 209, 1144, 1145.

Bayard-Chamberlain treaty of 1888. *See* Chamberlain-Bayard treaty.

Bayard to West, May 29, 1886, *U. S. C. Ap.*, 774, June 14, 1886, *U. S. C. Ap.*, 787, objection to original Canadian Customs Circular No. 371, 1194-5.

Bays: American contention as to, *U. S. A.*, 144-146, 1004-7. Americans fished in, memorial of Gloucester, Mass., to Webster, July, 1852, *U. S. C. C. Ap.*, 159, 1179. Americans fishing in, Watson to Shubrick, Sept. 2, 1853, *U. S. C. C. Ap.*, 182, 1190-91. As used in various treaties, 1075. Bathurst's position regarding, in 1815, 1042, 1047-49. British contention as to, *B. C.*, 83, 103, 122, *B. A.*, 92, 1002-4. "Coasts" comprehends edges of, 1114-1118. Comprised in maritime jurisdiction, 1059. Creeks, harbors in 1818 referred to those within 3-mile limit, 1130. Exclusion from, Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, LAMMASCH, 1045. Fishing in, 1845-52: 1179. Crowell's report, Feb. 10, 1852, *U. S. C. C. Ap.*, 209, 1179; Sabine's report, *U. S. C. Ap.*, 1283-4, 1179; "St. John New Brunswick," 1179. France-Great Britain, 1713 treaty, *B. C. Ap.*, 7, 1035. Geographically known as such, 1028. "Historic position" of United States regarding, 1012-1016. Impossibility of delimiting according to British contention, 1142. In 1818 treaty used geographically, British position, 1068-69. Instructions to provincial authorities limiting, Cardwell's letter, Apr. 12, 1866, *B. C. Ap.*, 221, 1191. Jurisdiction over, failure to prove assertion of, 1074. Land-locked, Jefferson to Genet, Nov. 8, 1793, *B. C. Ap.*, 56, 1081. Land-locked, Jefferson to Hammond, Nov. 8, 1793, *B. C. Ap.*, 57, 1081. No extended jurisdiction over, Jay treaty, 1064. Port Negro, 1108. Publicly known as such, 1002. Ragged Island Harbor, 1108. Seizures in Lipscomb Harbor, 1128. Shores without would be negligible, GRAY, 1133. Six-mile: adopted by British, Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145, 999, 1017, 1172; British position to-day, *Parliamentary Debates*, clxix, column 989, 999; *Commonwealth v. Manchester*, 152 *Mass. Rep.*, 230, 139 *U. S.*, 240, 1086, 1088; Cutts to Seward, Apr. 7, 1866, *U. S. C. Ap.*, 566, 1014; Fitzmaurice, speech in Parliament, 999; instructions regarding circular, Fillmore to Webster, July 20, 1852, *B. C. Ap.*, 155, 1181-2; Massachusetts Statute, 1859, 1087-88; objections of Nova Scotia and New Brunswick, 999; position of United States at Halifax arbi-

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- tration, 1014; Senate committee's report, 1887, 1014; Westlake, *I:187*, 999. Ten-mile, 1024, 1092-3. Three-mile limit in, Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1015, 1128-9, 1130-2, 1151. Treaty of Utrecht, *B. C. Ap.*, 6-7, 1075. Treaty of 1763, France-Spain-Great Britain, *B. C. Ap.*, 7, 1075-76. "Triangle" in, 1008. Used territorially or geographically in renunciatory clause, LAMMASCH, 1067. United States position today not in conflict with past, 1011-12.
- "Betsey," seizure of, 1128.
- Bonfils, *sec. 516*, maritime jurisdiction, 1060.
- Boosey, Jeffreys v., 4 *H. L. Cases 926*, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Boundary treaty, United States-Mexico, Feb. 2, 1848, *B. C. Ap.*, 34, Great Britain not affected by, Buchanan to Crampton, Aug. 19, 1848, *U. S. C. C. Ap.*, 624, 1089-90.
- Brier Island, Bay of Fundy, 1163.
- British claimed all seizures 1821-24 were within 3-mile limit, 1153.
- British commissioners, Bathurst to, Oct. 18, 1814, *O. A. Ap.*, 2247, maritime jurisdiction, 1026; 3-mile limit, 1041, 1098.
- British commissioners, Castlereagh to, Aug. 14, 1814, *O. A. Ap.*, 2244, 3-mile limit, 1098.
- British concurrence in American interpretation, 1023.
- "British limits," 1044.
- British limits, Castlereagh to Adams, May 7, 1817, *U. S. C. Ap.*, 295, 1107.
- British position that "bays" in 1818 treaty used geographically, 1063-69.
- British to American commissioners, Dec. 22, 1814, *U. S. C. Ap.*, 256, Mississippi River, 1071.
- Buchanan to Crampton, Aug. 19, 1848, *U. S. C. C. Ap.*, 624, Great Britain not affected by United States-Mexico boundary treaty, 1846, 1089-90.
- Burlamaqui, *p. 252*, cannon-shot rule is 3-mile limit, 1225.
- Buzzards Bay, jurisdiction of United States over, 1086-88.
- Calvo, T., *secs. 353, 356, 367*, cannon-shot rule is 3-mile limit, 1209, 1214. *Sec. 365, p. 498*, maritime jurisdiction, 1060.
- Canning, Rush to, May 3, 1824, *U. S. C. C. Ap.*, 127, vessels within 3-mile limit, Franco-American controversy, 1150.
- Canning to Wellington, Sept. 27, 1822, Fur Seal Arbitration, *Proceedings, V: 574*, British claims to broad jurisdiction, 1078-9.
- Cannon-shot distance is 3 miles, Twee Gebroeders, 3 *Robinson's Admiralty Reports 162, 336*, Anna, 5 *Robinson's Admiralty Reports 373*, Ann, 1 *Gallison's Reports 62, 1051-2, 1053*.
- Cannon shot or 3 miles general limit, Holland and Auckland to Howick, Nov. 14, 1806, *B. C. Ap. 61, 1056*.
- Cannon-shot rule interpreted by nations of world to be 3-mile limit: Azuni, *sec. 15, p. 205, 1208, 1226*. Burlamaqui, *p. 252, 1225*. Calvo, T., *secs. 353, 356, 367, 1209, 1214*. De Cussy, *I: 96-7, 1213*. Despagne, *sec. 415, 1216*. Ferguson, *p. 399, 1208; pp. 396-7, 1215*. Fiore, C., *secs. 205, 308, 1208, 1214*. Funck-Brentano and Sorel, *p. 375, 1215*. Galiani, *p. 422, 1207, 1226*. Hall, *p. 154, 1209*. Hautefeuille, *p. 57, 1212*. Heffter, *secs. 75, 76, 1207, 1211*. Holland, *Letters, p. 132 et seq., 1219*. Klüber, *secs. 130, 131, 1211*. Liszt, *p. 91, 1217*. G. F. de Martens, *secs. 40, 41, 1210, 1225*. Massé, *sec. 105, 1227*. Neyron, *p. 239, 1210*. Nys, *I: 446, 1218*. Oppenheim, *I: 241, 1209; I: 246, 247, 248, 1218, 1222*. Ortolan, *I: 171, 1207; I: 152, 1212*. Perels, *p. 30, 1209*. Phillimore, *I: 274, 276, 1207*. Piedelièvre, *vol. I,*

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

sec. 417, 1216. Pradier-Fodéré, sec. 632, 1208; sec. 662, 1215. Rivier, 1: 146, 1208; 1: 154, 1216. Sorel, Funck-Brentano and, p. 375, 1215. Stoerk, in Holtzendorff, II: 474, 1208. Testa, p. 69, 1216. Twiss, p. 292-5, 1208, 1213. Vattel, I: 23, 1210. Westlake, I: 187-8, 1217.

Cannon-shot rule interpreted by United States and Great Britain to be 3-mile limit, 1206-7.

Cannon-shot rule, treaty of 1806, 1051.

Cape North, 1169

Cape Percy, 1161

Cape Rogue, 1145.

Cardwell's letter, Apr. 12, 1866, *B. C. Ap.*, 221: instructions to provincial authorities limiting bays, 1191; 3 miles from any "British" bay, 1023.

Cases cited: *Ann, 1 Gallison's Reports, 62, Anna, 5 Robinson's Admiralty Reports, 373*, cannon-shot rule is 3 miles, 1053. *Commonwealth v. Manchester, 152 Mass. Rep., 230; 139 U. S. Rep., 240*, 6-mile bays, 3-mile limit, 1086, 1088. *The Commonwealth v. Peters, 12 Metcalf's Rep., 387 (Mass.)*, "sight" as test of jurisdiction, 1082-3. *Conception Bay, L. R. (1877) 2 App. Cas., 394, 1204-5. Cope v. Doherty, 2 de Gex and Jones 614*, jurisdiction, continued exercise and international acquiescence therein, 1221. *Dunham v. Lamphere, 3 Gray's Rep., 268*, 3-mile limit distinguished from "sight" test, 1086. "*Le Louis*," 2 *Dodson, 239*, jurisdiction, continued exercise and international acquiescence therein, 1221. *Moray Firth case, 1001. Regina v. Keyn, L. R. (1876) 2 Ex. Div., 63*, jurisdiction, continued exercise and international acquiescence therein, 1221. *Twee Gebroeders, 3 Robinson's Admiralty Reports, 162, 336*, cannon-shot distance is 3 miles, 1051-2. *U. S. v. Grush, 5 Mason's Rep., 290*, "sight" as test of jurisdiction, 1083-4.

Castlereagh to British commissioners, Aug. 14, 1814, *O. A. Ap.*, 2244, 3-mile limit, 1098.

Castlereagh to Adams, May 7, 1817, *U. S. C. Ap.*, 295, British limits, 1107.

Castlereagh to Robinson and Goulburn: July 28, 1814, *O. A. Ap.*, 2241, open sea fishery, maritime jurisdiction, 1026. Aug. 24, 1818, *B. C. Ap.*, 85, instructions, 1105.

Chaleurs, Bay of, fishing lost to United States, Lyman, 2:100, 1155-6.

Chamberlain-Bayard treaty of 1888, 1196-8. Report of Senate Committee on Foreign Relations, *B. C. Ap.*, 444, British bay defined, 1197.

Chambers between headlands, Madison to Monroe and Pinkney, May 17, 1806, *B. C. Ap.*, 60, 1055.

Charts showing nontreaty coasts, 1142.

Chesapeake Bay, case of, 1204.

Coast. *See also* Nontreaty coast.

Coast and shore convertible terms, FITZPATRICK, 1061.

"Coast" and "shore" interchangeable, 1806 treaty, 1051.

"Coast" comprehends edges of bays, 1114-1118.

Coast, "general outline" of, considered by treaty, Everett to Aberdeen, May 25, 1844, *U. S. C. Ap.*, 478-82, 1170-71.

"Coast" in Anglo-Russian treaty, 1825, 1092.

"Coast," treaty of 1763, Great Britain-France-Spain, *U. S. C. Ap.*, 52, 1117.

Cod and mackerel fisheries, one-third forfeited by new construction treaty, Sabine's report, *U. S. C. Ap. 1287*, 1159.

Cobbett, Pitt, p. 143, maritime jurisdiction, 1060.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Cod fishing existed in bays prior to mackerel fishery, 1157–1163: Aberdeen, Everett to, Aug. 10, 1843, *B. C. Ap.*, 131, May 25, 1844, *U. S. C. Ap.*, 473, 1162. Adams, pp. 211–215, 223, 1160, 1161. Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, cod and haddock in bays, 1159. Bay of Fundy, herring, mackerel, shad, and cod in, Johnston, attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, 1159. Davis in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 167, 1162. Everett to Ingersoll, Dec. 4, 1852, *U. S. C. Ap.*, 540, 1162. Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap.*, 124, 1162. Gloucester, Mass., memorial to Webster, July, 1852, *U. S. C. C. Ap.*, 159, 1161. LAMMASCH, cod, haddock, herring, mackerel in bays, 1158. Lawrence to Webster, Aug. 10, 1852, *U. S. C. Ap.*, 517, conversation with Malmesbury, 1162. Leonard to Sullivan, Nov. 10, 1802, *B. C. Ap.*, 57, 1159. Palmerston, Stevenson to, Mar. 27, 1841, *B. C. Ap.*, 126, 1162. Perley's report, *U. S. C. C. Ap.*, 530, 1161. Sabine's report, *U. S. C. Ap.*, 1231, 1161; mackerel fishery, 1158; *U. S. C. Ap.*, 1237, new construction treaty forfeits one-third cod and mackerel fisheries, 1159. Soulé in United States Senate, Aug. 12, 1852, *B. C. Ap.*, 173–4, 1162. Upshur to Everett, July 30, 1843, *U. S. C. Ap.*, 472, 1162.
- Cod in bays, Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, 1159. LAMMASCH, 1158.
- Cod in Bay of Fundy, Johnston, attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, 1159.
- Common law, English, adopts Grotius' views on territorial jurisdiction, 1224.
- Commonwealth v. Manchester, 152 *Mass. Rep.*, 230, 139 *U. S.*, 240, 6-mile bays, 3-mile limit, 1086, 1088.
- Commonwealth v. Peters, 12 *Metcalf's Rep.*, 337 (*Mass.*), "sight" as test of jurisdiction, 1082–3.
- Conception Bay case, *L. R. (1877) 2 App. Cas.*, 394, 1087, 1204–5. Based on narrow ground, Holland, *Letters*, p. 133, 1205. Decision narrow, Finlay, Alaskan Boundary Arbitration, *Proceedings*, 5:237, 1205.
- Conception Bay, jurisdiction over not acquiesced in by United States, 1087, 1206.
- Cope v. Doherty, 2 *De Gex & Jones*, 614, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Cow Bay Head, 1169.
- Crampton, Buchanan to, Aug. 19, 1848, *U. S. C. C. Ap.*, 624, Great Britain not affected by United States-Mexico boundary treaty, 1846, 1089–1090.
- Crampton, Malmesbury to, Aug. 11, 1852, *B. C. Ap.*, 172, British Admiral's instructions same for many years, 1184.
- Crampton to Malmesbury: Aug. 2, 1852, *B. C. Ap.*, 157, Webster's circular and Fillmore's instructions, 1182–3. Aug. 9, 1852, *B. C. Ap.*, 168, Webster's nonacceptance of British construction of bay, 1183.
- Creasy, p. 232, maritime jurisdiction, 1060.
- Creeks comprised in maritime jurisdiction, 1059.
- Creeks in 1818 referred to those within 3-mile limit, 1130.
- Crowell's report, Feb. 10, 1852, fishing in bays, 1845–52, *U. S. C. C. Ap.*, 209, 1179.
- Curing, fishing, or drying, "within the exclusive British jurisdiction" cause of differences prior to 1818, 1041.
- Curing: instructions, Adams to Gallatin and Rush, July 28, 1818, *U. S. C. Ap.*, 304, 1109. Monroe to Adams, Feb. 27, 1816, *U. S. C. Ap.*, 237, 1106.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

Customs Circular No. 371, (Canadian) *U. S. C. Ap.*, 761, 791, seizures within 3-mile limit, 1194.

Customs Circular No. 371, (Canadian) amended, in exact accord with treaty, Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, 1194, 1196. Objections to original, Bayard to West, May 29, 1886, *U. S. C. Ap.*, 774, 1194-5; June 14, 1886, *U. S. C. Ap.*, 787, 1195.

Cutts to Seward, Apr. 7, 1866, *U. S. C. Ap.*, 566, 6-mile bays, 1014.

Davis in United States Senate, Aug. 3, 1852, *B. C. Ap.*, 167, cod fishing in bays prior to mackerel fishing, 1162.

De Cussy: *I*: 96-7, cannon-shot rule is 3-mile limit, 1213. *I*: 96, maritime jurisdiction, 1060.

"Dee," seizure by, in 1817, 1107.

Delaware Bay, case of, 1202-4.

de Martens, G. F., *secs. 40, 41*, cannon-shot rule is 3-mile limit, 1210, 1225. *Sec. 153, p. 399*, maritime jurisdiction, 1060.

Despagnet, *sec. 415*, cannon-shot rule is 3-mile limit, 1216.

Diplomatic history 1783-1815 reviewed, 1048-72.

Dobbin to Shubrick, July 14, 1853, *U. S. C. C. Ap.*, 169, instructions, fishing within 3-mile limit, 1185-90.

Dodd to Howe, Sept. 1, 1852, *U. S. C. Ap.*, 1082, seizures to be within 3 miles, 1185.

Doherty, Cope *v.*, 2 *De Gex & Jones*, 614, jurisdiction, continued exercise and international acquiescence therein, 1221.

"Dominion" and "dominions," 1005.

"Dominion" defined, 1114.

"Dominions, His Britannic Majesty's," LAMMASCH, 1005.

"Dominions in America, His Britannic Majesty's," 1114.

"Dotterel," 998.

DRAGO: "Any" in renunciatory clause, 1112.

Drying, curing, or fishing, "within the exclusive British jurisdiction" cause of differences prior to 1818, 1041.

Drying: Instructions, Adams to Gallatin and Rush, July 28, 1818, *U. S. C. Ap.*, 304, 1109. Monroe to Adams, Feb. 27, 1816, *U. S. C. Ap.*, 287, 1106.

Dunham *v.* Lamphere, 3 *Gray's Rep.*, 268, 3-mile limit distinguished from "sight" test, 1086.

Everett-Aberdeen correspondence, 1844-5, British position not acquiesced in by Americans, 1170-73.

Everett, Aberdeen to, Mar. 10, 1845, *U. S. C. Ap.*, 489, opinion of law officers of Crown, 1169, Bay of Fundy, relaxation of British position, 1171.

Everett, Upshur to, July 30, 1843, *U. S. C. Ap.*, 472, cod fishing in bays prior to mackerel fishing, 1162.

Everett to Aberdeen: Aug. 10, 1843, *B. C. Ap.*, 131, cod fishing in bays prior to mackerel fishing, 1162. May 25, 1844, *U. S. C. Ap.*, 478-82, treaty considers "general outline" of coast, 1170-71. Mar. 25, 1845, *U. S. C. Ap.*, 497, Bay of Fundy, relaxation of British position, 1172-3.

Everett to Ingersoll, Dec. 4, 1852, *U. S. C. Ap.*, 540, cod fishing in bays prior to mackerel fishing, 1162.

Exclusion from high sea by treaty, GRAY, 1078.

"Exclusive British jurisdiction," 1044. Fishing, drying, curing, within; cause of differences prior to 1818, 1041.

Exclusive right of French, Protocols American-British conference, Mar. 29, 1824, *U. S. C. Ap.*, 124, Franco-American controversy, 1151.

Warren, Honorable Charles B.—Continued.*Question 5—Continued.*

"Exclusive sovereignty of Great Britain," 1044.

Falkland, Stanley to, May 19, 1845, *B. C. Ap.*, 145, 6-mile bays adopted by British, 999, 1017, 1172.

Falkland's stated case, for opinion of Crown law officers, 1168.

Ferguson, *I.* 399, cannon-shot rule is 3-mile limit, 1208; *pp.* 396-7, 1215. *I.* 399, maritime jurisdiction, 1060.

Fillmore to Webster, July 20, 1852, *B. C. Ap.*, 155, instructions regarding circular, 6-mile bays, 1181-2.

Finlay, Alaskan Boundary Arbitration, *Proceedings*, 5: 237, Conception Bay case decision narrow, 1205.

Fiore, *C.*, *sec.* 205, cannon-shot rule is 3-mile limit, 1208; *T.*, *sec.* 808, 1214.

Fish, Thornton to, Jan. 26, 1871, *U. S. C. Ap.*, 632, joint high commission, 1026.

Fishery controversy, none since 1818, Vail's report to President, Aug. 14, 1839, *U. S. C. Ap.*, 436, 440, 1164-5.

Fisheries, Mississippi and the, Russell to Adams, Feb. 11, 1815, *B. C. C. Ap.*, 150, 1096.

Fisheries not to be considered, treaty of Ghent, 1814, Monroe to American commissioners, June 25, 1814, *U. S. C. Ap.*, 242, 1070.

Fishery in nonterritorial waters, Russell at Fur Seal Arbitration, *Proceedings* 13: 320, 1027.

Fishery officers, Mitchell to, June 27, 1870, *U. S. C. Ap.*, 611, 613, seizures only within 3-mile limit, 1192.

Fishery rights outside British jurisdiction, GRAY, 1134.

Fishery within exclusive British jurisdiction, American commissioners to Monroe, Dec. 25, 1814, *U. S. C. Ap.*, 256, 1072.

Fishing in bays between 1845 and 1852, 1179.

Fishing, drying, or curing "within the exclusive British jurisdiction" cause of differences prior to 1818, 1041.

Fishing, instructions: Adams to Gallatin and Rush, July 28, 1818, *U. S. C. Ap.*, 304, 1109; Monroe to Adams, Feb. 27, 1816, *U. S. C. Ap.* 237, 1106.

Fitzmaurice, speech in Parliament, 6-mile bays, 999-1000.

FITZPATRICK: "Any" in renunciatory clause, 1112. Coast and shore convertible terms, 1061. Jurisdiction not asserted, 1812-1818, 1119. Renunciatory clause, 1019. Seizures in 1817, 1108. The "triangle," 1010.

Five-mile limit, 1063. Treaty of 1806, 1050.

"Forever," report Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1128-9, 1130-32.

Forsyth, Paine to, Dec. 29, 1839, *U. S. C. Ap.*, 451, headland theory, 3-mile limit, 1167.

Forsyth, Primrose to, Nov. 25, 1840, *U. S. C. Ap.*, 453, headland theory, 1167.

Forsyth to Stevenson, Feb. 20, 1841, *B. C. Ap.*, 124, cod fishing in bays prior to mackerel fishing, 1162.

France, treaties of. *See* Treaties cited.

Franco-American controversy, 1149-1152: Bay, St. Georges, British jurisdiction over not admitted, 1152. French exclusive right, protocols American-British conference, Mar. 29, 1824, *U. S. C. C. Ap.*, 124, 1151. Rush and Gallatin to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1151. Rush to Canning, May 3, 1824, *U. S. C. C. Ap.*, 127, vessels within 3-mile limit, 1150.

French exclusive right, protocols American-British conference, Mar. 29, 1824, *U. S. C. C. Ap.*, 124, Franco-American controversy, 1151.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Funck-Brentano and Sorel: *p. 375*, cannon-shot rule is 3-mile limit, 1215.
Page 375, maritime jurisdiction, 1060.
- Fundy, Bay of: Grand Manan Island, 1163. Herring, mackerel, shad, and cod in, Johnston, attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, 1159. Limits of, 1163-4. Murr Ground, 1164. Relaxation of British position: Everett to Aberdeen, Mar. 25, 1845, *U. S. C. Ap.*, 497, 1172-3; Aberdeen to Everett, Mar. 10, 1845, *U. S. C. Ap.*, 489, 1171.
- Fur Seal Arbitration: Alverstone, *Proceedings*, 13: 544, British claim of broad jurisdiction, 1099. American contention no more than 3-mile limit, 1120-6. American position, LAMMASCH, 1099. Canning to Wellington, Sept. 27, 1822, *Proceedings*, 5: 574, British claims to broad jurisdiction, 1078-9. Russell: *Proceedings* 13: 315-21, British claims to broad jurisdiction, 1076-78, 1098; fishery in nonterritorial waters, 1027; Oregon treaty, 13 *Proceedings* 79, 1090-91. Salisbury, *Proceedings*, 5: 572, British claim to broad jurisdiction, 3-mile limit, 1079-80. Thompson, *Proceedings* 13: 79, Oregon treaty, 1091.
- Galiani, *p. 422*, cannon-shot rule is 3-mile limit, 1207, 1226.
- Gallatin and Rush, Adams to, July 28, 1818, *U. S. C. Ap.*, 304, instructions, 1104-5, 1109; fishing, curing, drying, 1109.
- Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306: Franco-American controversy, 1151; Hudson Bay, 1128-9, 1130-2; report, "forever," "any" of the coasts, 1128-9, 1130-32; 3-mile limit, 1015, 1128-9, 1130-2, 1151.
- Genet, Jefferson to, Nov. 8, 1793, *B. C. Ap.*, 56, 3-mile limit, landlocked bays 1081.
- Ghent, Treaty of, *see* Treaty of 1814,
- Gloucester, Mass., memorial of, to Webster, July, 1852, *U. S. C. C. Ap.*, 159: Americans fished within bays, 1179; cod fishing in bays prior to mackerel, fishery, 1161.
- Goulburn and Robinson, Castlereagh to: July 28, 1814, *O. A. Ap.*, 2241, open sea fishery, maritime jurisdiction, 1026. Aug. 24, 1818, *B. C. Ap.*, 85, instructions, 1105.
- Grand Manan Island, Bay of Fundy, 1163.
- Granville, Lansdowne to, Mar. 25, 1886; *U. S. C. Ap.*, 756, instructions, seizures to be in 3-mile limit, 1193.
- Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, seizures only within 3-mile limit, 1192.
- GRAY: "Any" in renunciatory clause, 1112. Exclusion from high sea by treaty, 1078. Fishery rights outside British jurisdiction, 1134. Hudson Bay under 1818 treaty, 1132. Limits of White Bay, 1144. Maritime belt, 1059. Moray Firth case, 1001. Seizures in 1817, 1108. "Shores" without "bays" would be negligible, 1133. "Sight" as test of jurisdiction, 1084. Territorial bay within geographical bay, 1138. "Triangle," 1010.
- Great Britain, treaties of. *See* Treaties cited.
- Grey, Bannerman to, *U. S. C. C. Ap.*, 217, regulations, Prince Edward Island, act of 1843, never enforced, 1177.
- Grotius discussed: Territorial jurisdiction, 1223. Views on territorial jurisdiction adopted in English common law, 1224.
- Grush, United States v., 5 *Mason's Rep.*, 290, "sight" as test of jurisdiction, 1083-4.
- Gulf of St. Lawrence, in treaty of 1783, LAMMASCH, 1020.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Haddock in bays: Adams' diary, Nov. 25, 1782, *B. C. C. Ap.*, 101, 1159.
 LAMMASCH, 1158.
 Halifax arbitration, position of United States regarding 6-mile bays, 1014.
 Hall, *p. 157*, cannon-shot rule is 3-mile limit, 1209.
 Halleck, *I: 167*, maritime jurisdiction, 1060.
 Hammond, Jefferson to, Nov. 8, 1793, *B. C. Ap.*, 57, 3-mile limit, land-locked bays, 1081.
 Harbors, American claim to, Madison to Monroe and Pinkney, Feb. 3, 1807, *U. S. C. C. Ap.*, 98, 1065.
 Harbors: Comprised in maritime jurisdiction, 1059. In 1818 referred to those within 3-mile limit, 1130. Search within, Madison to Pinkney and Monroe, May 20, 1807, *U. S. C. C. Ap.*, 100, 1066.
 Harvey's instructions to prevent Americans coming within 3 miles of land, *U. S. C. Ap.*, 451, 998.
 Hautefeuille, *p. 57*, cannon-shot rule is 3-mile limit, 1212.
 Headland theory: Is new theory, case of "Washington," award of umpire, *U. S. C. 131-2*, 1173-5. Paine to Forsyth, Dec. 29, 1839, *U. S. C. Ap.*, 451, 1167. Primrose to Forsyth, Nov. 25, 1840, *U. S. C. Ap.*, 458, 1167. Rejected by Great Britain in unratified treaty of 1806, 1049.
 Headlands, chambers between, Madison to Monroe and Pinkney, May 17, 1806, *B. C. Ap.*, 60, 1055.
 Heffter, *secs. 75, 76*, cannon-shot rule is 3-mile limit, 1207, 1211.
 Herring fishery. *See* Mackerel fishery.
 Herring in Bay of Fundy, Johnston, attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, 1159.
 Herring in bays, LAMMASCH, 1158.
 "His Britannic Majesty's dominions in America," 1114.
 "His Britannic Majesty's dominions," LAMMASCH, 1005.
 "Historic position" of United States on bays, 1012-1016.
 Historical résumé, 1036-39.
 Hoare to Lake, Nov. 25, 1824, *U. S. C. Ap.*, 374-77, seizures to be within 3-mile limit, 1154.
 Holland and Auckland to Howick, Nov. 14, 1806, *B. C. Ap.*, 61, cannon shot or 3 miles general limit, 1056.
 Holland, *Letters, p. 132 et seq.*, cannon-shot rule is 3-mile limit, 1219; *p. 133*, Conception Bay case based on narrow ground, 1205.
 Howe, Dodd to, Sept. 1, 1852, *U. S. C. Ap.*, 1082, seizures to be within 3 miles, 1185.
 Howe to Laybold, Aug. 26, 1852, *U. S. C. Ap.*, 1080, seizures to be within 3 miles of land, 1185.
 Howick, Holland and Auckland to, Nov. 14, 1806, *B. C. Ap.*, 61, cannon shot or 3 miles general limit, 1056.
 Howick's instructions, treaty of 1806, not printed, 1065.
 Hudson Bay: Rush and Gallatin to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, Franco-American controversy, 1128-9, 1130-2, 1151. Three-mile limit in, Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1015.
 Under 1818 treaty GRAY, 1132.
 Imperial statute 1819 unimportant, 1153.
 Impressment, 1063.
 Ingersoll, Everett to, Dec. 4, 1852, *U. S. C. Ap.*, 540, cod fishing in bays prior to mackerel fishing, 1162.
 Institute of International Law, 12-mile limit, approved in 1894, 1220.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

Instructions to Admiral Harvey to prevent Americans coming within 3 miles of land, *U. S. C. Ap.*, 451, 998.

Instructions to American commissioners, July 28, 1818, *U. S. C. Ap.*, 304, 1104-5.

Instructions to British admiral re fishery, Malmesbury to Lawrence, Aug. 13, 1852, *U. S. C. Ap.*, 522, 1184.

Instructions to British admiral same for many years, Malmesbury to Cramp-ton, Aug. 11, 1852, *B. C. Ap.*, 172, 1184.

Instructions to British commissioners, Aug. 24, 1818, *B. C. Ap.*, 85, 1105.

International Law writers cited: Azuni, *sec. 15*, p. 205, cannon-shot rule is 3-mile limit, 1208, 1226. Bonfils, *sec. 516*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Burlamaqui, p. 252, cannon-shot rule is 3-mile limit, 1225. Calvo, *T. sec. 356*, cannon-shot rule is 3-mile limit, 1209; *secs. 353, 367, 1214*; *sec. 365*, p. 498, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Cobbett, p. 143, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Creasy, p. 232, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. De Cussy, *I. 96-7*, cannon-shot rule is 3-mile limit, 1213; *I. 96*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Despagnet, *sec. 415*, cannon-shot rule is 3-mile limit, 1216. Ferguson, *pp. 396-7, 399*, cannon-shot rule is 3-mile limit, 1208, 1215; *I. 399*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Fiore, *C. sec. 205*, cannon-shot rule is 3-mile limit, 1208; *T., sec. 808, 1214*. Funck-Brentano and Sorel, p. 375, cannon-shot rule is 3-mile limit, 1215; p. 375, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Galiani, p. 422, cannon-shot rule is 3-mile limit, 1207, 1226. Hall, p. 154, cannon-shot rule is 3-mile limit, 1209. Halleck, *I. 167*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Hautefeuille, p. 57, cannon-shot rule is 3-mile limit, 1212. Heffter, *secs. 75, 76*, cannon-shot rule is 3-mile limit, 1207, 1211. Holland, *Letters, p. 132 et seq.*, cannon-shot rule is 3-mile limit, 1219. Kent, *U. S. A., 218-220*, jurisdiction, continued exercise and international acquiescence therein, 1221. Klüber, *secs. 130, 131*, cannon-shot rule is 3-mile limit, 1211; *sec. 130*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Liszt, p. 91, cannon-shot rule is 3-mile limit, 1217. G. F. de Martens, *secs. 40, 41*, cannon-shot rule is 3-mile limit, 1210, 1225; *sec. 153*, p. 399, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Massé, *sec. 105*, cannon-shot rule is 3-mile limit, 1227. Neyron, p. 239, cannon-shot rule is 3-mile limit, 1210. Nys, *I. 446*, cannon-shot rule is 3-mile limit, 1218. Oppenheim, *I. 241, 246, 247, 248*, cannon-shot rule is 3-mile limit, 1209, 1218, 1222; *sec. 177*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1059. H. B. Oppenheim, p. 128, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Ortolan, *I. 171*, cannon-shot rule is 3-mile limit, 1207; *I. 152, 1212*. Perels, p. 30, cannon-shot rule is 3-mile limit, 1209. Phillimore, *I. 274, 276*, cannon-shot rule is 3-mile limit, 1207; *I. 284*, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Piedelièvre, *vol. I, sec. 417*, cannon-shot rule is 3-mile limit, 1216. Pradier-Fodéré, *secs. 632, 662*, cannon-shot rule is 3-mile limit, 1208, 1215. Rivier, *I. 146, 154*, cannon-shot rule is 3-mile limit, 1208, 1216. Schücking, p. 29, "sight" as test of jurisdiction, 1081-2. Sorel, Funck-Brentano and, p. 375, cannon-shot rule is

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- 3-mile limit, 1215. Stoerk, in Holtzendorff, *II*: 474, cannon-shot rule is 3-mile limit, 1208. Taylor, *U. S. A.*, 218-220, jurisdiction, continued exercise and international acquiescence therein, 1221; *sec. 217*, p. 263, *sec. 228*, p. 277, maritime jurisdiction includes bays, creeks, harbors, and 3-mile belt, 1060. Testa, p. 69, cannon-shot rule is 3-mile limit, 1216. Twiss, p. 292-5, cannon-shot rule is 3-mile limit, 1208, 1213. Vattel, *I*: 23, cannon-shot rule is 3-mile limit, 1210. Westlake, *I*: 187-8, cannon-shot rule is 3-mile limit, 1217; *I*: 187, 6-mile bay, 999. Wheaton, *U. S. A.*, 218-220, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Interpretation of 1818 treaty: British concurrence in American interpretation of jurisdiction, 1023. Change in British, Rush to his executors, Dec., 1854, *U. S. C. Ap.*, 547, 1141.
- Interpretation of renunciatory clause, Kent, 1200.
- "Intersection of 3-mile lines" theory, 1136-7.
- Introduction, 997.
- Jaseur incident: 1100-1101. Baker-Monroe correspondence, 1815, 1100. Monroe to Adams, July 21, 1815, *U. S. C. Ap.*, 263, 1101.
- Jay treaty, 1794, no extended jurisdiction over bays, 1064.
- Jefferson to Genet, Nov. 8, 1793, *B. C. Ap.*, 56, 3-mile limit, landlocked bays, 1081.
- Jefferson to Hammond, Nov. 8, 1793, *B. C. Ap.*, 57, 3-mile limit, landlocked bays, 1081.
- Jefferson to Secretary of Treasury, Sept. 8, 1804, *B. C. Ap.*, 59, "sight" as test of jurisdiction, 1081.
- Jeffreys v. Boosey, 4 *H. L. Cases*, 926, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Johnston, attorney-general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, herring, mackerel, shad, and cod in Bay of Fundy, 1159.
- Joint high commission, Thornton to Fish, Jan. 26, 1871, *U. S. C. Ap.*, 632, 1026.
- Jurisdiction: American contention at fur-seal arbitration no more than 3-mile limit, 1120-26. American interpretation concurred in by British, 1023. Bathurst made no claim to extended, 1048. British limits, Castlereagh to Adams, May 7, 1817, *U. S. C. Ap.*, 295, 1107. British, over St. Georges Bay not admitted, Franco-American controversy, 1152. Broad, British claim of: Alverstone, fur-seal arbitration, *Proceedings*, 13: 544, 1099; Canning to Wellington, Sept. 27, 1822, fur-seal arbitration: *Proceedings*, 5: 574, 1078-9; Madison to Monroe, Jan. 5, 1804, *B. C. Ap.*, 53, 1054; Russell-Adams controversy, 1095-98; Russell at fur-seal arbitration, *Proceedings*, 13: 320, 1076-8, 1098; Salisbury, fur-seal arbitration, *Proceedings*, 5: 572, 1079-80. Continued exercise and international acquiescence therein: Cope v. Doherty, 2 *De Gex. & Jones*, 614, 1221; Jeffreys v. Boosey, 4 *H. L. Cases*, 926, 1221; Kent, *U. S. A.*, 218-220, 1221; "Le Louis," 2 *Dodson*, 239, 1221; Massé, *sec. 105*, 1227; not involved here, 1220-1; Regina v. Keyn, *L. R. 2 Ex. Div.*, 210, 1221; Taylor, *U. S. A.*, 218-220, 1221; Wheaton, *U. S. A.*, 218-220, 1221. Exclusive British: 1044; American renunciation in 1818 referred only to, 1018. Fishing, drying, curing, within, cause of differences prior to 1818, 1041. Fishery rights outside British, GRAY, 1134. Fishery within exclusive British, American commissioners to Monroe, Dec. 25, 1814, *U. S. C. Ap.*, 256, 1072. Maritime, Alaskan boundary tribunal did not concern, LAMMASCH, 1094. See Maritime jurisdiction.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Method of acquisition over bay 1202. Not asserted, 1812–1818, FITZPATRICK, 1119. Of United States over Buzzards Bay, 1086–88. Over bays, failure to prove assertion of, 1074. Over bays, no extended, Jay treaty, 1064. Over Conception Bay not acquiesced in by United States, 1087, 1206. Rule of, in 1818, 1201. "Sight" as test of, *See* "Sight" as test of jurisdiction. Territorial: Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, 1103; British, limited to 3 miles, report of Senate Committee on Foreign Relations, 1887, *B. C. Ap.*, 390, 1198; Grotius discussed, 1223; Grotius's views adopted by English common law, 1224. "Within British," LAMMASCH, 1134; report of British commissioners, 1818, *B. C. Ap.*, 86, 1133–4.
- Jurisdictional claims, wide, by British, Madison to Monroe, Jan. 5, 1804, *B. C. Ap.*, 58, 1054.
- Kent, *U. S. A.*, 218–220, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Keyn, *Regina v., L. R. (1876), 2 Ex. Div.*, 63, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Kimberley to Young, Oct. 10, 1870, *U. S. C. Ap.*, 628, "bay of His Majesty's dominions," 1024–5.
- Klüber: *Secs. 130, 131*, cannon-shot rule is 3-mile limit, 1211. *Sec. 130*, maritime jurisdiction, 1060.
- Lake, Hoare to, Nov. 25, 1824, *U. S. C. Ap.*, 374–77, seizures to be within 3-mile limit, 1154.
- LAMMASCH: Alaskan boundary arbitration did not concern maritime jurisdiction, 1094. "Any" in renunciatory clause, 1112. "Bays" used territorially or geographically in renunciatory clause, 1067. Cod, haddock, herring, mackerel in bays, 1158. Exclusion from bays, Bathurst to Baker, Sept. 7, 1815, *B. C. Ap.*, 64, Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 65, 1045. Fur Seal arbitration, American position, 1099. Gulf of St. Lawrence in treaty of 1783, 1020. "His Britannic Majesty's Dominions," 1005. Paine's report, meaning of "bay," *U. S. C. Ap.*, 451, 1016. Seizures in 1817, 1108. "Triangle," 1008. "Within British jurisdiction," 1134.
- Lamphere, Dunham *v.*, 3 *Gray's Rep.*, 268, 3-mile limit distinguished from "sight" test, 1086.
- Lansdowne to Granville, Mar. 25, 1886, *U. S. C. Ap.*, 756, instructions, seizures to be in 3-mile limit, 1193.
- Law officers of crown, opinion of: Aberdeen to Everett, Mar. 10, 1845, *U. S. C. Ap.*, 489, 1169. Falkland's stated case for, 1168.
- Lawrence, Malmesbury to, Aug. 13, 1852, *U. S. C. Ap.*, 522, British admiral's instructions re fishery, 1184.
- Lawrence to Webster, Aug. 10, 1852, *U. S. C. Ap.*, 517, conversation with Malmesbury, cod fishing in bays prior to mackerel fishing, 1162.
- Laybold, Howe to, Aug. 26, 1852, *U. S. C. Ap.*, 1080, seizures to be within 3 miles, 1185.
- "Le Louis," 2 *Dodson*, 239, jurisdiction, continued exercise and international acquiescence therein, 1221.
- Le Marchant to Seymour, Aug. 26, 1852, *U. S. C. Ap.*, 1079, British admiral instructed not to interfere unless vessel within 3 miles, 1184.
- Leonard to Sullivan, Nov. 10, 1802, *B. C. Ap.*, 57, cod fishing in bays prior to mackerel fishery, 1159.
- Liberties, renewal of, Bathurst to Adams, Oct. 30, 1815, *U. S. C. Ap.*, 278, 1105.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- "Liberty", Adams' opinion, Dec. 26, 1814, *B. C. C. Ap.*, 168, 1097-8.
 License system, 1024, 1191-2.
 Lipscomb Harbor, seizures in, 1128.
 Liszt, *p. 91*, cannon-shot rule is 3-mile limit, 1217.
 Lyman, *2: 100*, Bay of Chaleurs fishing lost to United States, 1155-6.
 Mackerel and cod fisheries, one-third forfeited by new construction treaty,
 Sabine's report, *U. S. C. Ap.*, 1287, 1159.
 Mackerel fishery, Sabine's report, 1158.
 Mackerel fishery, *see* Cod fishing existed in bays prior to mackerel fishery.
 Mackerel in Bay of Fundy, Johnston, attorney general of Nova Scotia, Sept.
 17, 1844, *B. C. Ap.*, 139, 1159.
 Mackerel in bays, LAMMASCH, 1158.
 Madison, Monroe and Pinkney to, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, American
 claim of 3-league limit, 1062.
 Madison to Monroe, Jan. 5, 1804, *B. C. Ap.*, 58, British wide jurisdictional
 claims, 1054.
 Madison to Monroe and Pinkney: May 17, 1806, *B. C. Ap.*, 60, chambers
 between headlands, 1055. Feb. 3, 1807, *U. S. C. C. Ap.*, 98, American
 claim to harbors, 1065. May 20, 1807, *U. S. C. C. Ap.*, 100, search within
 harbors, 1066.
 Malmesbury, conversation with, cod fishing in bays prior to mackerel fishing,
 Lawrence to Webster, Aug. 10, 1852, *U. S. C. Ap.*, 517, 1162.
 Malmesbury, Crampton to: Aug. 2, 1852, *B. C. Ap.*, 157, Webster's circular
 and Fillmore's instructions, 1182-3. Aug. 9, 1852, *B. C. Ap.*, 168, Web-
 ster's nonacceptance of British construction of bay, 1183.
 Malmesbury to Crampton, Aug. 11, 1852, *B. C. Ap.*, 172, British admiral's
 instructions same for many years, 1184.
 Malmesbury to Lawrence, Aug. 13, 1852, *U. S. C. Ap.*, 522, British admiral's
 instructions *re* fishery, 1184.
 Manchester, Commonwealth *v.*, 152 *Mass. Rep.*, 230; 139 *U. S. Rep.*, 240,
 6-mile bays, 3-mile limit, 1086, 1088.
 Maps, none before negotiators, in 1818, 1147.
 Marcy, Rush to, July 18, 1853, *U. S. C. Ap.*, 549, 3-mile limit, shelter, wood,
 water, 1140.
 Maritime-belt, GRAY, 1059.
 Maritime jurisdiction: Alaskan boundary tribunal did not concern, LAM-
 MASCH, 1094. American renunciation referred only to British exclusive,
 1018. Bathurst to British commissioners, Oct. 18, 1814, *O. A. Ap.*, 2247,
 1026. Castlereagh to Robinson and Goulburn, July 28, 1814, *O. A. Ap.*,
 2241, 1026. Claims of, 1818, 1029-30. Comprises bays, creeks, harbors
 and 3-mile belt: Bonfils, *sec. 516*, 1060; Calvo, *sec. 365*, *p. 498*, 1060;
 Cobbett, *p. 143*, 1060; Creasy, *p. 232*, 1060; De Cussy, *I. 96*, 1060; Fergu-
 son, *I. 399*, 1060; Funck-Brentano and Sorel, *p. 375*, 1060; Halleck, *I. 167*,
 1060; Klüber, *sec. 130*, 1060; G. F. de Martens, *sec. 153*, *p. 399*, 1060; Op-
 penheim, *sec. 177*, 1059; H. B. Oppenheim, *p. 128*, 1060; Phillimore,
 I. 284, 1060; Taylor, *sec. 217*, *p. 263*; *sec. 228*, *p. 277*, 1060.
 "Maritime limits," 1044.
 Massachusetts, statutes of, *see* Statutes cited.
 Massé: *sec. 105*, cannon-shot rule is 3-mile limit; jurisdiction, continued
 exercise and international acquiescence therein, 1227.
 Mexico-United States, boundary treaty, Feb. 2, 1848, *B. C. Ap. 34*, Great
 Britain not affected by, Buchanan to Crampton, Aug. 19, 1848, *U. S. C. C.*
 Ap. 624, 1089-90.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

Mexico, treaties of. *See* Treaties cited.

Mississippi and the fisheries, Russell to Adams, Feb. 11, 1815, *B. C. C. Ap.*, 150, 1096.

Mississippi River, British to American commissioners, Dec. 22, 1814, *U. S. C. Ap.*, 256, 1071.

Mitchell to fishery officers, June 27, 1870, *U. S. C. Ap.*, 611, 613, seizures only within 3-mile limit 1192.

Mitchell's map not used 1818 negotiations, Adams' diary, July 8, 1823, *B. C. Ap.* 108, 1148.

Modus vivendi of 1885, 1193.

Monroe, Adams to, Sept. 19, 1815, *B. C. Ap.*, 65: Bathurst on territorial jurisdiction, 1045, 1102; LAMMASCH, 1045.

Monroe, American commissioners to, Dec. 25, 1814, *U. S. C. Ap.*, 256, fishery within exclusive British jurisdiction, 1072.

Monroe and Pinkney, Madison to: May 17, 1806, *B. C. Ap.*, 60, chambers between headlands, 1055. Feb. 3, 1807, *U. S. C. C. Ap.*, 98, American claim to harbors, 1065. May 20, 1807, *U. S. C. C. Ap.*, 100, search within harbors, 1066.

Monroe and Pinkney to Madison, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, American claim of 3-league limit, 1062.

Monroe-Baker correspondence, 1815, Jaseur incident, 1100.

Monroe, Madison to, Jan. 5, 1804, *B. C. Ap.*, 58, British wide jurisdictional claims, 1054.

Monroe to Adams: July 21, 1815, *U. S. C. Ap.*, 263, Jaseur incident, right to fish unshaken, 1101. Feb. 27, 1816, *U. S. C. Ap.*, 287, fishing, curing, and drying, 1106.

Monroe to American commissioners, June 25, 1814, *U. S. C. Ap.*, 242, fisheries not to be discussed, treaty of Ghent, 1070.

Moray Firth case, 1001.

Murr Ground, Bay of Fundy, 1164.

"Nabby," seizure of, 1128.

Negotiations, 1783 treaty, 1031-35.

Negotiations, treaty of Ghent (1814): Fisheries not to be discussed, Monroe to American commissioners, June 25, 1814, *U. S. C. Ap.*, 242, 1070. Fishery within exclusive British jurisdiction, American commissioners to Monroe, Dec. 25, 1814, *U. S. C. Ap.*, 256, 1072. Mississippi River, British to American commissioners, Dec. 22, 1814, *U. S. C. Ap.*, 256, 1071.

Negotiation of treaty of 1818, 1109-1119. Mitchell's map not used, Adams' diary, July 8, 1823, *B. C. Ap.*, 108, 1148.

Negotiators 1818 treaty did not have maps, 1147.

New Brunswick: Objection to 6-mile bays, 999. Regulations, May 3, 1853, *B. C. Ap.*, 623, 1177.

Newfoundland, statutes of. *See* Statutes cited.

Newfoundland Legislature, report of, right to fish, 1845, *U. S. C. Ap.*, 1068, 1177-8.

Neyron, p. 239, cannon-shot rule is 3-mile limit, 1210.

Nontreaty coast, question 5 concerns only, 1010.

Nonterritorial waters, fishery in, Russell at Fur Seal Arbitration, *Proceedings*, 13: 320, 1027.

Nontreaty coasts, charts showing, 1142.

North, Cape, 1169.

North Sea fisheries convention rule of 1882, 1092.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Nova Scotia: Attempt to nullify treaty provisions, *U. S. C. Ap.*, 1040-42, 1165. Objection to 6-mile bays, 999. Statutes, *see* Statutes cited.
- Nys, *I*: 446, cannon-shot rule is 3-mile limit, 1218.
- Open-sea fishery, Castlereagh to Goulburn and Robinson, July 28, 1814, *O. A. Ap.*, 2241, 1026.
- Oppenheim, *I*: 241, cannon-shot rule is 3-mile limit, 1209, 1212; *I*: 246, 247, 248, 1218, 1222. *Sec.* 177, maritime jurisdiction, 1059.
- Oppenheim, H. B., *p.* 123, maritime jurisdiction, 1060.
- Oregon boundary treaty, June 15, 1846, *B. C. Ap.*, 32, 1089-91.
- Oregon treaty: Russell, Fur Seal Arbitration, *Proceedings*, 13: 79, 1090-1. Thompson, Fur Seal Arbitration, *Proceedings*, 13: 79, 1091.
- Ortolan: *I*: 171, cannon-shot rule is 3-mile limit, 1207; *I*: 152, 1212.
- Oswald to Townshend, Nov. 30, 1782, *U. S. C. Ap.*, 234, 3-league limit, 1033.
- Paine to Forsyth, Dec. 29, 1839, *U. S. C. Ap.*, 451, headland theory, 3-mile limit, 1167.
- Paine's report, 1839, *U. S. C. Ap.*, 451, meaning of "bay," LAMMASCH, 1016.
- Palmerston, Stevenson to, Mar. 27, 1841, *B. C. Ap.*, 126, cod fishing in bays prior to mackerel fishing, 1162.
- Percy, Cape, 1169.
- Perels, *p.* 30, cannon-shot rule is 3-mile limit, 1209.
- Perley's report, *U. S. C. C. Ap.*, 580, cod fishing in bays prior to mackerel fishing, 1161.
- Perry, admission of commodore, 1185.
- Peters, Commonwealth *v.*, 12 *Metcalf's Rep.*, 387 (*Mass.*), "sight" as test of jurisdiction, 1032-3.
- Phillimore: *I*: 274, 276, cannon-shot rule is 3-mile limit, 1207; *I*: 284, maritime jurisdiction, 1060.
- Piedelièvre, *Vol. I*, *sec.* 417, cannon-shot rule is 3-mile limit, 1216.
- Pinkney and Monroe, Madison to: May 17, 1806, *B. C. Ap.*, 60, chambers between headlands, 1055. Feb. 3, 1807, *U. S. C. C. Ap.*, 98, American claim to harbors, 1065. May 20, 1807, *U. S. C. C. Ap.*, 100, search within harbors, 1066.
- Pinkney and Monroe to Madison, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, American claim of 3-league limit, 1062.
- Port au Port Bay, limits of, Newfoundland fishing regulations, 1908, *U. S. C. Ap.*, 209, 1144, 1145.
- Port Negro, 1108.
- Pradier-Fodéré, *sec.* 632, cannon-shot rule is 3-mile limit, 1208; *sec.* 662, 1215.
- President's message, Dec. 29, 1818, *re* 1818 treaty, 1129.
- Primrose to Forsyth, Nov. 25, 1840, *U. S. C. Ap.*, 458, headland theory, 1167.
- Prince Edward Island, act of 1843, *B. C. Ap.*, 617, never enforced, Bannerman to Grey, *U. S. C. C. Ap.*, 217, regulations, 1177.
- Protocols American-British conference, Mar. 29, 1824, *U. S. C. C. Ap.*, 124, exclusive right of French, Franco-American controversy, 1151.
- Protocols of negotiations, Treaty of 1818, 1111-12.
- Question 5 concerns only nontreaty coast, 1010.
- Ragged Island Harbor, 1108.
- "Raven," seizure of, 1128.
- Reciprocity treaty of 1854, duration of, 1191.
- Regina *v.* Keyn, *L. R.* (1876) 2 *Ex. Div.*, 63, jurisdiction, continued exercise and international acquiescence therein, 1221.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Regulations: New Brunswick, May 3, 1853, *B. C. Ap.*, 623, 1177. Newfoundland, fishing regulations 1908, *U. S. C. Ap.*, 209, White Bay, Port au Port Bay, limits of, 1144, 1145. Prince Edward Island, act of 1843, *B. C. Ap.*, 617, never enforced, Bannerman to Grey, *U. S. C. C. Ap.*, 217, 1177.
- Renunciation, purpose of, Rush, 1833, 1139.
- Renunciation clause: Adams to Russell, May 3, 1822, and 1822, *B. C. C. Ap.*, 162, 165, 1097. American draft, 1113. Bays used territorially or geographically, LAMMASCH, 1067. "Any" in, LAMMASCH, GRAY, DRAGO, 1112. FITZPATRICK, 1019, 1112. Interpretation, Kent, 1200.
- Repairs, wood, water, and shelter, vessel seeking, may go within 3-mile limit, 1136.
- Right to fish, report of Newfoundland Legislature, 1845, *U. S. C. Ap.*, 1068, 1177-8.
- Right to fish unshaken, Jaseur incident, Monroe to Adams, July 21, 1815, *U. S. C. Ap.*, 263, 1101.
- Right to fishery, Adams, Journal, *U. S. C. Ap.*, 223, 1033.
- "Rights," Adams' opinion, Dec. 26, 1814, *B. C. C. Ap.*, 168, 1097-8.
- Rivier, 1:146, 154, cannon-shot rule is 3-mile limit, 1208, 1216.
- Robinson and Goulburn, Castlereagh to: July 28, 1814, *O. A. Ap.*, 2241, open-sea fishery, maritime jurisdiction, 1026. Aug. 24, 1818, *B. C. Ap.*, 85, instructions, 1105.
- Rogue, Cape, 1145.
- Roseberry to West, July 23, 1886, *U. S. C. Ap.*, 823, amended Canadian Customs Circular No. 371 in exact accord with treaty, 1194, 1196.
- Rush, 1833, purpose of renunciation, 1139.
- Rush and Gallatin, Adams to: July 28, 1818, *U. S. C. Ap.*, 304: instructions, 1104-5, 1109; fishing, curing, drying, 1109.
- Rush and Gallatin to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306: report, "forever," "any" of the coasts, 1128-9, 1130-32; Hudson Bay, 1128-9, 1130-32, 1151; 3-mile limit, 1015, 1128-9, 1130-32, 1151; Franco-American controversy, 1151.
- Rush to Canning, May 3, 1824, *U. S. C. C. Ap.*, 127, vessels within 3-mile limit, Franco-American controversy, 1150.
- Rush to his executors, Dec., 1854, *U. S. C. Ap.*, 547, change in British construction of 1818 treaty, 1141.
- Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 3-mile limit, shelter, wood, water, 1140.
- Russell-Adams controversy, British claim of broad jurisdiction, 1095-98.
- Russell, Adams to: May 3, 1822, *B. C. C. Ap.*, 162, renunciation clause, 1097; 3-mile limit, 1097, 1140. 1822, *B. C. C. Ap.*, 165, renunciation clause, 1097.
- Russell to Adams, Feb. 11, 1815, *B. C. C. Ap.*, 150, Mississippi and the fisheries, 1096.
- Russell, Fur Seal Arbitration: *Proceedings*, 13: 315-21, British claims to broad jurisdiction, 1076-78, 1098; fishery in nonterritorial waters, 1027. *Proceedings*, 13: 79, Oregon treaty, 1090-91.
- Russia, treaties of. See Treaties cited.
- Sabine's report: Cod fishing in bays prior to mackerel fishing, *U. S. C. Ap.*, 1281, 1161. Fishing in bays, 1845-52, *U. S. C. Ap.*, 1283-4, 1179, mackerel fishery, 1158. *U. S. C. Ap.*, 1287, new construction treaty forfeits one-third cod and mackerel fisheries, 1159.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- St. Georges Bay, British jurisdiction over not admitted, Franco-American controversy, 1152.
- “St. John New Brunswick,” fishing in bays, 1845–52, 1179.
- St. Lawrence, Gulf of, in treaty of 1783, LAMMASCH, 1020.
- Sale and seizure of vessels and goods, Nova Scotia statute, 1836, *U. S. C. Ap.*, 120, 122, 1166.
- Salisbury, Fur Seal Arbitration, *Proceedings*, 5: 572, 3-mile limit, British claim to broad jurisdiction, 1079–80.
- Schücking, p. 29, “sight” as test of jurisdiction, 1081–2.
- Secretary of the Treasury, Jefferson to, Sept. 8, 1804, *B. C. Ap.*, 59, “sight” as test of jurisdiction, 1081.
- Seizure and sale of vessels and goods, Nova Scotia statute, 1836, *U. S. C. Ap.*, 120, 122, 1166.
- Seizure of “Argus,” 16 miles off shore, test case, 1169–70, 1173–77.
- Seizure of “Washington,” a test case, 1128, 1169, 1173–77.
- Seizures, 1812–1818, all within 3-mile limit, 1127.
- Seizures in 1817: 1107. GRAY, FITZPATRICK, LAMMASCH, 1108. Were within 3-mile limit, 1108.
- Seizures in 1821–24; 1153–55. British claimed all seizures were within 3-mile limit, 1153. Hoare to Lake, Nov. 25, 1824, *U. S. C. Ap.*, 374–77, seizures to be within 3-mile limit, 1154.
- Seizures to be within 3 miles: Canadian Customs Circular No. 371, *U. S. C. Ap.*, 761, 791, 1194. Dodd to Howe, Sept. 1, 1852, *U. S. C. Ap.*, 1082, 1185. Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, 1192. Howe to Laybold, Aug. 26, 1852, *U. S. C. Ap.*, 1080, 1185. Lansdowne to Granville, Mar. 25, 1886, *U. S. C. Ap.*, 756, 1193. Mitchell to fishery officers, June 27, 1870, *U. S. C. Ap.*, 611, 613, 1192.
- Senate Committee on Foreign Relations, report, 1887, *B. C. Ap.*, 380: British territorial jurisdiction limited to 3 miles, 1198. Six-mile bays, 1014.
- Seward, Cutts to, Apr. 7, 1866, *U. S. C. Ap.*, 566, 6-mile bays, 1014.
- Seward to Adams, Apr. 10, 1866, *U. S. C. Ap.*, 566, “historic position” of United States regarding bays, 1013.
- Seymour, Le Marchant to, Aug. 26, 1852, *U. S. C. Ap.*, 1079, British admiral instructed not to interfere unless vessel within 3 miles, 1184.
- Shad in Bay of Fundy, Johnston, attorney general of Nova Scotia, Sept. 17, 1844, *B. C. Ap.*, 139, 1159.
- Shelter, Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 1140.
- Shelter, wood, water, and repairs, vessels seeking, may go within 3-mile limit, 1136.
- “Shore” and “coast” convertible terms, FITZPATRICK, 1061.
- “Shore” and “coast” interchangeable, 1806 treaty, 1051.
- “Shores” without “bays” would be negligible, GRAY, 1133.
- Shubrick, Dobbin to, July 14, 1853, *U. S. C. C. Ap.*, 169, instructions, fishing within 3-mile limit, 1185–90.
- Shubrick, Watson to, Sept. 2, 1853, *U. S. C. C. Ap.*, 182, Americans fishing in bays, 1190–91.
- “Sight” as test of jurisdiction: *Commonwealth v. Peters*, 12 *Metcalf’s Rep.*, 387 (*Mass.*), 1082–3. Distinguished from 3-mile limit, *Dunham v. Lamphere*, 3 *Gray’s Rep.*, 268, 1086. GRAY, 1084. Jefferson to Secretary of Treasury, Sept. 8, 1804, *B. C. Ap.*, 59, 1081. Schücking, p. 29, 1081–2. United States v. Grush, 5 *Mason’s Rep.*, 290, 1083–4.
- Six-mile bays. *See* Bays, six-mile.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- Sorel, Funck-Brentano and, *p. 375*, cannon-shot rule is 3-mile limit, 1215.
- Soulé, in United States Senate, Aug. 12, 1852, *B. C. Ap.*, 173-4, cod fishing in bays prior to mackerel fishing, 1162.
- "Sovereignty, exclusive, of Great Britain," 1044.
- Spain, treaties of. *See* Treaties cited.
- Stanley to Falkland, May 19, 1845, *B. C. Ap.*, 145, 6-mile bays adopted by British, 999, 1017, 1172.
- Statutes cited: *Massachusetts*: 1859, 3-mile limit, 6-mile bays, 1087-88. *Newfoundland*, fishing regulations, 1908, *U. S. C. Ap.*, 209, White Bay, Port au Port Bay, limits of, 1144, 1145. *Nova Scotia*: 1836, *U. S. C. Ap.*, 120, 122, seizure and sale of vessels and goods, 1166.
- Stevenson, Forsyth to, Feb. 20, 1841, *B. C. Ap.*, 124, cod fishing in bays prior to mackerel fishing, 1162.
- Stevenson to Palmerston, Mar. 27, 1841, *B. C. Ap.*, 126, cod fishing in bays prior to mackerel fishing, 1162.
- Stoerk, in Holtzendorff, *II*: 474, cannon-shot rule is 3-mile limit, 1208.
- Story, cannon-shot rule is 3 miles, 1053.
- Stowell, 3 miles is cannon-shot rule, 1051-2, 1053.
- Sullivan, Leonard to, Nov. 10, 1802, *B. C. Ap.*, 57, cod fishing in bays prior to mackerel fishery, 1159.
- Summary of argument, 1199-1202.
- Taylor: *U. S. A.*, 218-220, jurisdiction, continued exercise, and international acquiescence therein, 1221. *Sec. 217*, *p. 263*, and *sec. 228*, *p. 277*, maritime jurisdiction, 1060.
- Ten-mile bay, 1024, 1092-3.
- Territorial jurisdiction: Adams to Bathurst, Sept. 25, 1815, *U. S. C. Ap.*, 268, 1103: Bathurst on, Adams to Monroe, Sept. 19, 1815, *B. C. Ap.*, 65, 1045, 1102, LAMMASCH, 1045. British, limited to 3 miles, report of Senate Committee on Foreign Relations, 1887, *B. C. Ap.*, 390, 1198. Grotius discussed, 1223. Views of Grotius, adopted by English common law, 1224.
- Testa, *p. 69*, cannon-shot rule is 3-mile limit, 1216.
- Thompson, Fur Seal Arbitration, *Proceedings*, 13: 79, Oregon treaty, 1091.
- Thornton to Fish, Jan. 26, 1871, *U. S. C. Ap.*, 632, joint high commission, 1026.
- Three-league limit: American claim of, Monroe and Pinkney to Madison, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, 1062. Great Britain-France-Spain, 1763 treaty, *B. C. Ap.*, 8, 1035. Oswald to Townshend, Nov. 30, 1782, *U. S. C. Ap.*, 234, 1033. Rejected by United States, 1032-33.
- Three-mile belt comprised in maritime jurisdiction, 1059.
- Three-mile limit: Adams to Russell, May 3, 1822, *B. C. C. Ap.*, 162, 1097, 1140. American contention Fur Seal Arbitration no more than, 1120-6. Bathurst to British commissioners, Oct. 18, 1814, *O. A. Ap.*, 2247, 1098. British claimed all seizures 1821-24 were within, 1153. British seizures in 1817 were within, 1108. Cannon-shot rule interpreted to be, by United States and Great Britain, 1206-7. Bays, creeks, harbors, in 1818 referred to those within, 1130. British position before Alaskan boundary arbitration, 1091-95. *Commonwealth v. Manchester*, 152 *Mass. Rep.*, 230; 139 *U. S.*, 240; 1086, 1088. Distinguished from "sight" test, *Dunham v. Lamphere*, 3 *Gray's Rep.*, 268, 1086. Gallatin and Rush to Adams, Oct. 20, 1818, *U. S. C. Ap.*, 306, 1015, 1128-9, 1130-32; Franco-American controversy, 1151. Instructions *re* fishing within, Dobbin to Shubrick, July 14, 1853, *U. S. C. C. Ap.*, 169, 1185-90. Jefferson to Genet, Nov. 8, 1793, *B. C. Ap.*, 56, 1081. Jefferson to Hammond, Nov. 8, 1793,

Warren, Honorable Charles B.—Continued.*Question 5*—Continued.

B. C. Ap., 57, 1081. Massachusetts statute, 1859, 1087-88. Paine to Forsyth, Dec. 29, 1839, *U. S. C. Ap.*, 451, 1167. Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 1140. Salisbury, Fur Seal Arbitration, *Proceedings*, 5: 572, 1079-80. Seizures 1812-1818 all within, 1127. Seizures in 1817 within, 1108. Seizures only within: Canadian Customs Circular No. 371, *U. S. C. Ap.*, 761, 791, 1194; Dodd to Howe, Sept. 1, 1852, *U. S. C. Ap.*, 1082, 1185; Granville to Young, June 6, 1870, *U. S. C. Ap.*, 609, 1192; Hoare to Lake, Nov. 25, 1824, *U. S. C. Ap.*, 374-77, 1154; Howe to Laybold, Aug. 26, 1852, *U. S. C. Ap.*, 1080, 1185; Lansdowne to Granville, Mar. 25, 1886, *U. S. C. Ap.*, 756, 1193; Mitchell to Fishery officers, June 27, 1870, *U. S. C. Ap.*, 611, 613, 1192. Vessel seeking shelter, wood, water, and repairs may go within, 1136. Vessels within, Rush to Canning, May 3, 1824, *U. S. C. C. Ap.*, 127, Franco-American controversy, 1150. *See also* Cannon-shot rule.

Three-mile lines, theory of the intersection of, 1136-7.

Three-mile rule. *See* Cannon-shot rule.

Three-mile rule, method of application, 1118.

Three miles, British admiral instructed not to interfere unless vessel within, Le Marchant to Seymour, Aug. 26, 1852, *U. S. C. Ap.*, 1079, 1184.

Three miles is cannon-shot distance: Ann, 1 *Gallison's Reports*, 62, 1051-2, 1053; Anna, 5 *Robinson's Admiralty Reports*, 373; Twee Gebroeders, 3 *Robinson's Admiralty Reports*, 162, 336.

Three miles is limit of British territorial jurisdiction, report of Senate Committee on Foreign Relations, 1887, *B. C. Ap.*, 390, 1198.

Three miles of land, Harvey's instructions to prevent Americans coming within, *U. S. C. Ap.*, 451, 998.

Three miles, or cannon shot, general limit, Holland and Auckland to Howick, Nov. 14, 1806, *B. C. Ap.*, 61, 1056.

Three miles, seizures to be within. *See* Three-mile limit.

Townshend, Oswald to, Nov. 30, 1782, *U. S. C. Ap.*, 234, 3-league limit, 1033.

Treasury, Secretary of, Jefferson to, Sept. 8, 1804, *B. C. Ap.*, 59, "sight" as test or jurisdiction, 1081.

Treaties cited: 1713, (Utrecht) France-Great Britain, *B. C. Ap.*, 7, "bays," 1035, 1075. 1763, France-Spain-Great Britain, *U. S. C. Ap.*, 52, "bays," 1075-6, coast, 1117, 3-league limit, 1035. 1783, Great Britain-United States, abrogation of, 1031, negotiations, 1031-5. 1794, Great Britain-United States, no extended jurisdiction over bays, 1064. 1806, Great Britain-United States, discussed, 1049-51; negotiation of: cannon-shot rule, 1051; "coast" and "shore" interchangeable, 1051; five-mile limit, 1050, 1063; Holland and Auckland to Howick, Nov. 14, 1806, *B. C. Ap.*, 61, cannon-shot or 3-mile general limit, 1056; Howick's instructions not printed, 1065; Madison to Monroe, Jan. 5, 1804, *B. C. Ap.*, 58, British wide jurisdictional claims, 1054; Madison to Monroe and Pinkney, May 17, 1806, *B. C. Ap.*, 60, chambers between headlands, 1055, Feb. 3, 1807, *U. S. C. C. Ap.*, 98, American claim to harbors, 1065, May 20, 1807, *U. S. C. C. Ap.*, 100, search within harbors, 1066; Monroe and Pinkney to Madison, Nov. 11, 1806, *U. S. C. C. Ap.*, 95, American claim of 3-league limit, 1062. 1814, Great Britain-United States, 1070-72; negotiations, fisheries not to be discussed in, Monroe to American Commissioners, June 25, 1814, *U. S. C. Ap.*, 242, 1070. 1818, Great Britain-United States, Mitchell's map not used, Adam's diary, July 8, 1823, *B. C. Ap.*, 108, 1148; negotiations, 1109-1119, protocols of negotiations, 1111-12; President's message regarding, Dec.

Warren, Honorable Charles B.—Continued.

Question 5—Continued.

- 29, 1818, 1129. 1825, Great Britain-Russia, "coast," 1092. 1839, France-Great Britain, 10-mile bay, 1024. 1846, United States-Great Britain, *B. C. Ap.*, 32, Oregon boundary treaty, 1089-91. 1848, Mexico-United States, *B. C. Ap.*, 34, boundary treaty, 1089. 1854, Great Britain-United States, reciprocity, duration of, 1101. 1871 (Washington), Great Britain-United States, duration of, 1193.
- Treaty, new construction of forfeits one-third cod and mackerel fisheries, Sabine's report, *U. S. C. Ap.*, 1287, 1159.
- Treaty not violated, umpire's awards cases of "Washington" and "Argus," 1173-5.
- "Triangle": 1008, 1118-1119. GRAY, FITZPATRICK, 1010. Is territorial waters, 1008. LAMMASCH, 1008.
- Tribunal, question by, "bays" used territorially or geographically in renunciatory clause, 1067.
- Twec Gebroeders, 3 *Robinson's Admiralty Reports*, 162, 336, cannon-shot distance is 3 miles, 1051-2, 1053.
- Twelve-mile limit, Institute of International Law, approved in 1894, 1220.
- Twiss, *p.* 292-5, cannon-shot rule is 3-mile limit, 1208, 1213.
- United States-Mexico, boundary treaty, Feb. 2, 1848, *B. C. Ap.*, 34, Great Britain not affected by, Buchanan to Crampton, Aug. 19, 1848, *U. S. C. Ap.*, 624, 1089-90.
- United States position to-day not in conflict with past, 1011-12.
- United States rejected 3-league limit, 1032-33.
- United States, treaties of. *See* Treaties cited.
- United States *v.* Grush, 5 *Mason's Rep.*, 290, "sight" as test of jurisdiction, 1083-4.
- Upshur to Everett, July 30, 1843, *U. S. C. Ap.*, 472, cod fishing in bays prior to mackerel fishing, 1162.
- Utrecht, treaty of, "bays," *B. C. Ap.*, 6-7, 1075.
- Vail's report to President, Aug. 14, 1839, *U. S. C. Ap.*, 436, 440, no controversy since 1818, 1164-5.
- Vattel, *I.* 23, cannon-shot rule is 3-mile limit, 1210.
- Vessel seeking shelter, wood, water, and repairs, may go within 3-mile line, 1136.
- "Washington," case of the: 1017. Award of umpire, *U. S. C.*, 131-32, treaty not violated, headlands doctrine new, 1173-5.
- "Washington," seizure of, 1128. A test case, 1169, 1173-77.
- Washington, treaty of. *See* Treaties cited.
- Water, repairs, wood, and shelter, vessel seeking may go within 3-mile limit, 1136.
- Water, Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 1140.
- Watson to Shubrick, Sept. 2, 1853, *U. S. C. C. Ap.*, 182, Americans fishing in bays, 1190-91.
- Webster, Fillmore to, July 20, 1852, *B. C. Ap.*, 155, instructions regarding circular, 6-mile bays, 1181-2.
- Webster, Gloucester, Mass., memorial to, July, 1852, *U. S. C. C. Ap.*, 159, Americans fished within bays, 1179. Cod fishing in bays prior to mackerel fishery, 1161.
- Webster, Lawrence to, Aug. 10, 1852, *U. S. C. Ap.*, 517, conversation with Malmesbury, cod fishing in bays prior to mackerel fishing, 1162.
- Webster's circular, July 19, 1852, does not accept British construction of bay, 1180.

Warren, Honorable Charles B.—Continued.*Question 5—Continued.*

- Webster's circular and Fillmore's instructions, Crampton to Malmesbury, Aug. 2, 1852, *B. C. Ap.*, 157, 1182-3.
- Webster's nonacceptance of British construction of bay, Crampton to Malmesbury, Aug. 9, 1852, *B. C. Ap.*, 168, 1183.
- Wellington, Canning to, Sept. 27, 1822, Fur Seal Arbitration, Proceedings, V: 574, British claims to broad jurisdiction, 1078-9.
- West, Bayard to, May 29, 1886, *U. S. C. Ap.*, 774, and June 14, 1886, *U. S. C. Ap.*, 787, objections to original Canadian Customs Circular No. 371, 1194-5.
- West, Roseberry to, July 23, 1886, *U. S. C. Ap.*, 823, amended Canadian Customs Circular No. 371 in exact accord with treaty, 1194, 1196.
- Westlake: *I*: 187-8, cannon-shot rule is 3-mile limit, 1217. *I*: 187, 6-mile bays, 999.
- Wheaton, *U. S. A.*, 218-220, jurisdiction, continued exercise and international acquiescence therein, 1221.
- White Bay: Attempt to delimit, 1143-4. Limits of: GRAY, 1144; Newfoundland fishing regulations, 1908, *U. S. C. Ap.*, 209, 1144, 1145.
- "Within British jurisdiction": LAMMASCH, 1134. Report of British commissioners, 1818, *B. C. Ap.*, 86, 1133-4.
- Wood, Rush to Marcy, July 18, 1853, *U. S. C. Ap.*, 549, 1140.
- Wood, water, repairs, and shelter, vessel seeking may go within 3-mile limit, 1136.
- Young, Granville to, June 6, 1870, *U. S. C. Ap.*, 609, seizures only within 3-mile limit, 1192.
- Young, Kimberley to, Oct. 10, 1870, *U. S. C. Ap.*, 628, "bay of His Majesty's dominions," 1024-5.

Winter, Sir James S.*Question 1, pp. 911-955. (July 4, 1910.)*

- Americans purchased herring, did not seine for it, 918-19.
- Bait act, 1887, American purchased herring prior to, 919.
- Bait: caplin for, 928; purchase of by Americans, GRAY, 922; purchase of through licenses, 920.
- Ballast, Newfoundland statute, 1889, *B. C. Ap.*, 717, 939-40.
- Bays: cod-fishery practically nonexistent in, 921; herring fishery is in, 926.
- Bond on policy of prohibition of sale of herring, 945.
- Bultows: Prohibition against is local matter, 952. Prohibition against, applies to nontreaty coast, GRAY, 951. Regulations against, 951. Trawls and, damage caused by, 949.
- Caplin, fishery is valuable, 928.
- Close season: 933. Act of 1879, *B. C. Ap.*, 708, 933. In herring fishery, winter is, GRAY, 937.
- Cod fishery practically nonexistent in bays, 921; principally on banks, 920.
- Cod net, defined, 938.
- Cod trap, defined, 938; act of 1882, *B. C. Ap.*, 709, 934.
- Commercial privileges only terminated by prohibition against sale of herring, 944.
- Conditions in 1862, 917.
- DRAGO: Sunday fishing law related to nets, 933.
- Employment of Newfoundlanders, 930, 944; not per se illicit, 946.
- FITZPATRICK: purchase of herring for commercial purposes, 925.
- Foreign fishing vessels act (Newfoundland) 1893, *B. C. Ap.*, 730, 941.
- Fortune Bay, herring most abundant in, 948. Use of seines, 918.

Winter, Sir James S.—Continued.

Question 1—Continued.

- GRAY: Prohibition of sale of herring was retaliatory legislation, 945. Prohibition of bultows applies to nontreaty coast, 951. Purchase of bait by Americans, 922. Right to catch herring, 925. Sunday fishing, 932. Winter a close season in herring fishery, 937.
- Haddock not in Newfoundland waters, 923.
- Halibut not in Newfoundland waters, 923.
- Harbors, cod fishing practically nonexistent in, 921.
- Herring fishery: Discrimination against Americans, Newfoundland statute, 1884, *B. C. Ap.*, 709, 936. Is in bays and harbors, 926. Methods used, only question to-day, 924. Not carried on by Americans in Newfoundland waters, 922. Winter a close season in, GRAY, 937.
- Herring: Americans purchased, prior to Bait act of 1887, 919. For commercial purposes, nets used in catching, 937. In-barring of, defined, 927; prohibited, 928. Most abundant in Fortune Bay, 948. Prohibition against sale only terminated commercial privileges, 944. Prohibition of sale of was retaliatory legislation, GRAY, 945. Prohibition of sale of, Bond on, 945. Purchase of, a trading not fishing right, 942-3. Purchase of forbidden, 1905, 924. Purchase of for commercial purposes, FITZPATRICK, 925. Purchase of more convenient for Americans, 918. Right to catch, GRAY, 925. Sale of, forbidden, Newfoundland statute, 1905, *B. C. Ap.*, 757, 944. Seines used principally for, 939.
- Hiring men without license, foreign fishing vessels act of 1893, *B. C. Ap.*, 730, 941.
- In-barring of herring, defined, 927. Prohibited, 928.
- LAMMASCH: License fee, 920. Seining, Newfoundland statute of 1892, *B. C. Ap.*, 720, 926-7. Use of nets, 933.
- Legislation up to 1885 applicable to both Americans and Newfoundlanders, 939.
- Liberty to fish in prescribed waters always worthless, 926.
- License, hiring men without, foreign fishing vessels act of 1893, *B. C. Ap.*, 730, 941.
- Licenses: Foreign fishing vessels act (Newfoundland) 1893, *B. C. Ap.*, 730, 941-2. Newfoundland statute, 1892, *B. C. Ap.*, 720, 941. Purchase of bait through, 920.
- License fee, LAMMASCH, 920.
- Mackerel not in Newfoundland waters, 923.
- Minister of Fisheries of Canada on purse seines, *B. C. C. Ap.*, 195, 952, 954.
- Modality, regulation of fisheries is not, 954.
- Modus vivendi, 1888, 920.
- Nets: Remaining set over Sunday, Newfoundland statute, 1891, *B. C. Ap.*, 720, 935. Sunday fishing law related to, DRAGO, 933. Use of, LAMMASCH, 933. Use of, act of 1872, *B. C. Ap.*, 704, 933. Used in catching herring for commercial purposes, 937.
- Newfoundland legislation, regulation by, 912-955.
- Newfoundland regulations: As a whole not injurious to Americans, 948. Of 1908 not prejudicial to Americans, 948. Summary of, 928-930. Turner's position on, 913-916.
- Newfoundland, statutes of, *see* Statutes cited.
- Newfoundlanders, employment of, 930, 944. Not per se illicit, 946.
- Nontreaty coast, prohibition of bultows applies to, GRAY, 951.
- Purse seines: Not included in act of 1862, *B. C. Ap.*, 702, 927. Report of Canadian Minister of Fisheries on, *B. C. C. Ap.*, 195, 952, 954. Very destructive, 952.
- Regulation, right of, 912.

Winter, Sir James S.—Continued.

Question 1—Continued.

Regulations: Against bultows, 951. Injurious to Americans would also be so to Newfoundlanders, 949. Of fisheries is not modality, 954. Newfoundland, as a whole not injurious to Americans, 948. Newfoundland, of 1908 not prejudicial to Americans, 948. Summary of Newfoundland, 928-930.

Right of regulation by Newfoundland legislature, 912-955.

Rubbish, Newfoundland statute, 1889, *B. C. Ap.*, 717, 939-40.

Sand, Newfoundland statute, 1889, *B. C. Ap.*, 717, 939-40.

Seines: Always used by Newfoundland fishermen, 917. Purse, report of Canadian Minister of Fisheries on, *B. C. C. Ap.*, 195, 952, 954. Purse, very destructive, 952. Sunday fishing confused with regulations against, 916. Used principally for herring, 939. Use of in Fortune Bay, 918.

Seining: Newfoundland statute of 1892, *B. C. Ap.*, 720, LAMMASCH, 926-7. Sunday prohibition only applied to, 932.

Statutes cited: *Newfoundland*: 1887, bait act, *B. C. Ap.*, 711, 919. 1862, did not concern purse seines, *B. C. Ap.*, 702, 927. 1872, Consolidated Statutes, nets, use of, *B. C. Ap.*, 704, 933. 1876, Sunday fishing, *B. C. Ap.*, 707, 931; 1877, Sunday fishing, *B. C. Ap.*, 707, 932. 1879, close season, *B. C. Ap.*, 708, 933. 1882, cod traps, *B. C. Ap.*, 709, 934. 1884, herring fishery, discrimination against Americans, *B. C. Ap.*, 709, 936. 1889, ballast sand, rubbish, *B. C. Ap.*, 717, 939-940. 1891, Sunday fishing, nets remaining set, *B. C. Ap.*, 720, 935. 1892, licenses, *B. C. Ap.*, 720, 941. 1892, *B. C. Ap.*, 720, seining, 926-927. 1893, foreign fishing vessels act, licenses, visit of ships, hiring men without license, *B. C. Ap.*, 730, 941. 1905, sale of herring forbidden, *B. C. Ap.*, 757, 944.

Sunday fishing: 931, 932. GRAY, 932. Confused with regulations against seines, 916. Law related to nets, DRAGO, 933. Newfoundland statutes, 1876, *B. C. Ap.*, 707, 931; 1877, *B. C. Ap.*, 707, 932; 1891, *B. C. Ap.*, 720, 935.

Sunday prohibition applied only to seining, 932.

Trawls and bultows, damage caused by, 949.

Turner's position on Newfoundland regulations, 913-916.

Visit of ships, foreign vessels act of 1893, *B. C. Ap.*, 730, 941.

Washington, treaty of, expired in 1885, 934.

Question 6, pp. 956-997. (July 4, 5, 1910.)

Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 83, resumption of negotiations, treaty of 1818, west coast not mentioned, 978-9.

American fishing on French coast not waiver by Great Britain, 993.

American method of curing different from French and Newfoundland, 973.

Americans fish on banks or Labrador coasts, 974.

Bagot, Monroe to: Dec. 30, 1816, *B. C. Ap.*, 78, fish on coasts, drying in harbors and creeks, 971-2. Jan. 7, 1817, *B. C. Ap.*, 79, negotiations practically dropped, 978.

Bagot to Monroe, Nov. 27, 1816, *B. C. Ap.*, 77, beginning of 1818 treaty negotiations, 970.

Bank fishery, Newfoundland cod fishery is practically, 973-4.

Banks, American fish on, 974.

Bays: Americans had right to enter under 1783 treaty, DRAGO, LAMMASCH, 963. Believed to be within treaty right by negotiators, GRAY, 968. Cod do not come into certain Newfoundland, 960. Cod fisheries in, comparatively valueless, 974. Drying and curing in, GRAY, 959. Newfoundland, rights of French in, LAMMASCH, 967. Nontreaty, necessity for express right of shelter in, GRAY, 976. Not mentioned in treaty with France, LAMMASCH, 967. Labrador, cod come into, 960.

Winter, Sir James S.—Continued.

Question 6—Continued.

"Bays, harbors, and creeks of the southern part of the coast," grammatical sense of, LAMMASCH, 962.

Bond, Sir Robert, first gave treaty construction now contended for, 992.

British contention, 956.

British have prima facie case, 996.

Cape Ray to Quirpon, no evidence of American fishing except in 1823, 993.

"Coast:" Article 3, 1818 treaty, FITZPATRICK, 965. Common definition, 959.

Interpretation of treaty, Maxwell, *p.* 396, 989. Versus "coasts," 980, DRAGO, GRAY, FITZPATRICK, LAMMASCH, 981-3.

Coast, French, *see* French coast.

Coasts and harbors, Americans may fish all along, Journal Newfoundland legislative assembly, 1845, *U. S. C. Ap.*, 1068, FITZPATRICK, LAMMASCH, 990-91.

Cod come into bays of Labrador, 960.

Cod do not come into certain Newfoundland bays, creeks, and harbors, 960.

Cod fishery: In bays comparatively valueless, 974. In Newfoundland, practically bank fishery, 973-4. In shallow water only on Labrador coast, 987. Negotiations of 1818 treaty related only to, 987. Only one in 1818, Dana, Halifax commission, *B. C. C. Ap.*, 188, 988. 1818, treaty not limited to, LAMMASCH, 996.

Cod not caught by French on their treaty coast, 969.

Construction of treaty now contended for first given by Sir Robert Bond, 992.

Creeks, drying and curing in, GRAY, 959.

Creeks, *see* Bays.

Curing, American method of, different from French and Newfoundland, 973.

Curing and drying, in bays, harbors, and creeks, GRAY, 959. Right of, gives shelter, 976.

Curing fish on shipboard, GRAY, 973.

Dana, Halifax commission, *B. C. C. Ap.*, 188, mackerel fishery unknown until 1830, cod fishery only in 1818, 988.

DRAGO: Americans had right to enter bays under 1783 treaty, 963. "Coast" versus "coasts," 981-3.

Drying, American negotiators' report, 1818, GRAY, 985.

Drying and curing, in bays, harbors, and creeks, GRAY, 959. Right of, gives shelter, 976.

Drying in harbors and creeks, Monroe to Bagot, Dec. 30, 1816, *B. C. Ap.*, 78, 971-2.

Falkland to Russell, May 8, 1841, *B. C. Ap.*, 130, fishing entirely outside 3-mile limit, 987.

Fish, American right to, along all coasts and harbors, Journal of Newfoundland Legislative Assembly, 1845, *U. S. C. Ap.*, 1068, FITZPATRICK, LAMMASCH, 990-1.

Fish can not be cured where caught, 960.

Fisheries not new grant, treaty of 1818, 986.

Fishing: American negotiators' report, 1818, GRAY, 985. Entirely outside 3-mile limit, Falkland to Russell, May 8, 1841, *B. C. Ap.*, 130, 987. On coasts, Monroe to Bagot, Dec. 30, 1816, *B. C. Ap.*, 78, 971-2.

FITZPATRICK: Americans may fish along all coasts and harbors, Journal Newfoundland Legislative Assembly, 1845, *U. S. C. Ap.*, 1068, 990-1. "Coast," article 3, 1818 treaty, 965. "Coast" versus "coasts," 981-3.

French coast, American fishing on, not waiver by Great Britain, 993.

French did not catch cod on their treaty coasts, 969.

French method of curing different from American, 973.

Winter, Sir James S.—Continued.

Question 6—Continued.

- French rights in Newfoundland bays, LAMMASCH, 967.
 French treaty, bays not mentioned in, LAMMASCH, 967.
 Gallatin and Rush, Adams to, July 28, 1818, *B. C. Ap.*, 83, resumption of negotiations, treaty of 1818, west coast not mentioned, 978-9.
 Gallatin and Rush to Robinson and Goulburn, Oct. 7, 1818, *B. C. Ap.*, 91, American ultimatum did not mention west coast of Newfoundland, 984.
 Gallatin and Rush to Secretary of State, Oct. 20, 1818, *B. C. Ap.*, 94, right on west coast of Newfoundland, 985.
 Goulburn and Robinson, Rush and Gallatin to, Oct. 7, 1818, *B. C. Ap.*, 91, American ultimatum did not mention west coast of Newfoundland, 984.
 Grant, fisheries not a new, treaty of 1818, 986.
 GRAY: Americans now claiming new right—herring fishery, 994. "Coast" versus "coasts," 981-3. Curing fish on shipboard, 973. Drying and curing in bays, harbors, and creeks, 959. Fishing, drying, shelter, American negotiators' report, 985. Necessity for express right to shelter in nontreaty bays, 976. Negotiators believed bays were within treaty right, 968. Right of shelter exists only on nontreaty coasts, 975.
 Halifax commission, Dana's speech, *B. C. C. Ap.*, 188, mackerel fishery unknown until 1830, cod fishery only in 1818, 988.
 Harbors. See Bays, and Coasts.
 Harbors, drying and curing in, GRAY, 959.
 Herring fishery now claimed is new right, GRAY, 994.
 Interpretation of treaty: "Coast," Maxwell, *p. 396*, 989. Freedom of this tribunal from technical rules, 958. Sir Robert Bond first gave construction now contended for, 992. Vattel, *U. S. C. C. Ap.*, 524, 989.
 Labrador coast has only shallow-water cod fishery, 987.
 Labrador coasts, Americans fish on, 974.
 Labrador, cod come into bays of, 960.
 Labrador, rights in distinguished from those in Newfoundland, 956.
 LAMMASCH: Americans had right to enter bays under 1783 treaty, 963. Americans may fish along all coasts and harbors, Journal Newfoundland Legislative Assembly, 1845, *U. S. C. Ap.*, 1068, 990-1. Bays not mentioned in treaty with France, 967. "Coast" versus "coasts," 958, 981-3. Grammatical sense of phrase "bays, harbors, and creeks of the southern part of the coast," 962. Rights of French in Newfoundland bays, 967. 1818 treaty not limited to cod fishery, 996.
 Mackerel fishery unknown until 1830, Dana, Halifax commission, *B. C. C. Ap.*, 188, 988.
 Maxwell, *p. 396*, interpretation of treaty, "coast," 989.
 Monroe, Bagot to, Nov. 27, 1816, *B. C. Ap.*, 77, beginning of 1818 treaty negotiations, 970.
 Monroe to Bagot: Dec. 30, 1816, *B. C. Ap.*, 78, fish on coasts, drying in harbors and creeks, 971-2. Jan. 7, 1817, *B. C. Ap.*, 79, negotiations practically dropped, 978.
 Negotiations, treaty of 1818: 966-973, 978-981, 983. Beginning, Bagot to Monroe, Nov. 27, 1816, *B. C. Ap.*, 77, 970. Practically dropped, Monroe to Bagot, Jan. 7, 1817, *B. C. Ap.*, 79, 978. Related only to cod fishery, 987. Report of negotiators on fishing, drying, and shelter, GRAY, 985. Resumed, Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 83, 978-9.
 Newfoundland bays: Cod do not come into certain, 960. Rights of French in, LAMMASCH, 967.
 Newfoundland cod fishery practically bank fishery, 973-4.

Winter, Sir James S.—Continued.

Question 6—Continued.

Newfoundland Legislative Assembly, Journal, 1845, *U. S. C. Ap.*, 1068, Americans may fish along all coasts and harbors, FITZPATRICK, LAMMASCH, 990-1.

Newfoundland method of curing different from American, 973.

Newfoundland, rights in distinguished from those in Labrador, 956.

Newfoundland, west coast of: No fishery on, 977. Not mentioned in American ultimatum, Rush and Gallatin to Robinson and Goulburn, Oct. 7, 1818, *B. C. Ap.*, 91, 984. Not mentioned on resumption of negotiations, Adams to Gallatin and Rush, July 28, 1818, *B. C. Ap.*, 83, 978-9. Right on, Rush and Gallatin to Secretary of State, Oct. 20, 1818, *B. C. Ap.*, 94, 985.

Nontreaty bays, necessity for express right of shelter in, 976.

Nontreaty coasts, right of shelter exists only on, GRAY, 975.

Prima facie case established by Great Britain, 996.

Quirpon, Cape Ray to, no evidence of American fishing except in 1823, 993.

Renunciation extended only to 3 miles from coast, 986.

Robinson and Goulburn, Rush and Gallatin to, Oct. 7, 1818, *B. C. Ap.*, 91, American ultimatum did not mention west coast of Newfoundland, 984.

Rush and Gallatin, Adams to, July 28, 1818, *B. C. Ap.*, 83, resumption of negotiations, treaty of 1818, west coast not mentioned, 978-9.

Rush and Gallatin to Robinson and Goulburn, Oct. 7, 1818, *B. C. Ap.*, 91, American ultimatum did not mention west coast of Newfoundland, 984.

Rush and Gallatin to Secretary of State, Oct. 20, 1818, *B. C. Ap.*, 94, right on west coast of Newfoundland, 985.

Russell, Falkland to, May 8, 1841, *B. C. Ap.*, 130, fishing entirely outside 3-mile limit, 987.

Secretary of State, Rush and Gallatin to, Oct. 20, 1818, *B. C. Ap.*, 94, right on west coast of Newfoundland, 985.

Shelter: American negotiators' report, 1818, GRAY, 985. Given by right to dry and cure, 976. In nontreaty bays, necessity for express right of, GRAY, 976. Right of, exists only on nontreaty coasts, GRAY, 975.

Three-mile limit, fishing entirely outside, Falkland to Russell, May 8, 1841. *B. C. Ap.*, 130, 987.

Three miles from coast, renunciation extended only to, 986.

Treaties cited: 1783, Americans had right to enter bays under, DRAGO, LAMMASCH, 963. 1818, See Negotiations, treaty of 1818. 1818 not limited to cod fishery, LAMMASCH, 986. See also Interpretation of treaties.

Vattel, *U. S. C. C. Ap.*, 524, cited by Bond on interpretation of treaty, 989, West coast. See Newfoundland, west coast.

Miscellaneous.

Executive and legislative acts alleged to be violations of the treaty, list of, requested by the Tribunal, 1443.

Great Britain, representatives of, 1, 2.

LAMMASCH, President, opening address, 2-5; closing remarks, 2239.

Limitation of argument, 911.

Opening session of the Tribunal, 1.

Order of the Tribunal regarding remarks on article 4 of the Special Agreement of 1909, 1444.

Telegram from Queen of Holland to Tribunal, 6.

Telegram from Tribunal to Queen of Holland, 5.

Tribunal, members of, 1.

United States, representatives of, 1, 2.

